BREASTFEEDING, FEMINISM, AND POLITICAL THEORY

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ABSTRACT

Amanda Barnes Cook: Breastfeeding, Feminism, and Political Theory
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This project situates breastfeeding mothers within feminist liberal political theory, framing breastfeeding as a central human capability in a capabilities approach. It explores the ways in which social and political institutions and norms affect the ability of women to breastfeed; that is, an official legal right to breastfeed is inadequate because breastfeeding mothers demand positive conditions under which breastfeeding is possible given the constraints of their lives. The dissertation systematically considers both women's capability of breastfeeding and women's autonomy.

The first chapter explores welfare state theory as it affects breastfeeding workers; an analysis of the literature suggests that overlooking the needs of breastfeeding workers is common and harmful. This chapter concludes that an equality-promoting welfare model is appropriate for breastfeeding workers. Breastfeeding workers need specific protections, protections which may be sex-specific; this chapter shows that sex-specific policies have an important place in equality-promoting welfare models.

The second chapter explores the issue of people, including breastfeeding mothers, who evoke discomfort or disgust in public. The analysis shows that public and private spheres must be accessible in certain ways: first, every person must be able to occupy public space while embracing all significant aspects of their personhood; second, the comfort of others cannot weigh

more than an individual's own needs in public; finally, all people must be able to opt for privacy in a way that does not entail invisibility or coerced exclusion.

The final chapter analyzes the concept of maternal access to children, arguing that breastfeeding mothers require access to their children and that the ability to express breast milk cannot function as a substitute for access. The chapter explores the concept of access through in-depth study of two cases of separations of mothers and their breastfed children: maternal incarceration and custody disputes.

To Simon, who hated breastfeeding, and to Elliot, who loves it, both of whom taught me the struggle and the joy. And to my mother, and all mothers.

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LIST OF ABBREVIATIONS

AAP	American Academy of Pediatrics
ACA	Patient Protection and Affordable Care Act of 2010
ACOG	American College of Obstetricians and Gynecologists
ALI	American Law Institute
CDC	Centers for Disease Control and Prevention
FMLA	Family and Medical Leave Act of 1993
OECD	Organisation for Economic Co-operation and Development
WIC	Special Supplemental Nutrition Program for Women, Infants, and Children
WHO	World Health Organization

INTRODUCTION

The central claim of this dissertation is that a just and egalitarian society must have institutions and policies in place that guarantee women the preconditions under which they can freely decide to breastfeed. A political and social order that constrains this decision for women is unjust and exacerbates gender inequalities, alchemizing biological difference into social and political disadvantage. Ultimately, this project situates breastfeeding mothers within feminist political theory. As breastfeeding initiation and duration rates continue to increase, the political importance of breastfeeding to women's lives will only become more salient. Feminist theories need to become attuned to the special needs of women's lives in order to support the creation of social and political institutions that establish the preconditions for lives of human dignity and well-being—lives that allow women to exercise their fundamental human capabilities.

In certain contexts, women are disadvantaged relative to men because of biological differences; breastfeeding is an important case. Pregnant and breastfeeding mothers cannot ignore their bodies. Their bodies—the capabilities of the flesh—are visible and demanding. Pregnant and lactating bodies have an enormous effect on women's lives, and a mother can easily spend more than ten years pregnant or lactating, so these effects are not passing, but rather integral to the lives of many mothers. The needs of women are, therefore, different than the needs of men. The needs of breastfeeding mothers are distinct from the needs of other groups, and these needs are urgent.

Some feminists, concerned that it will make women appear weak, disadvantaged, and inferior, believe that it is unwise to speak of women as having "special needs." But every human

has a unique set of needs; some are sex specific and others not. That a need is sex specific does not constitute evidence of inferiority. Political society has traditionally been designed to meet the needs of men. A fair and just society features political and social institutions designed to avoid systematic advantage or disadvantage to a group on the basis of a distinct set of needs.

In the United States today, four in five women become mothers (Livingston and Cohn 2010). The needs and struggles of motherhood, therefore, are of primary importance to the feminist project, as they define the lives of the vast majority of women. Rather than framing the struggles of motherhood as logical consequences of a "choice," which are therefore politically unimportant because women volunteered for these struggles when they became pregnant and birthed children, we must minimize the struggles of motherhood that stem from social and political structures while viewing the biological struggles of motherhood (including the logistics of pregnancy and breastfeeding) as a simple fact of reality. Politically, it makes more sense to think of motherhood as a fact of the human condition than as a "choice."

Likewise, most mothers breastfeed; more than three in four mothers breastfeed for some length of time (U.S. CDC 2013). Breastfeeding is a fact of motherhood for many women. We need not enter into debate about the benefits of breastfeeding, though scientific evidence about breastfeeding will surely enter into many mothers' individual infant feeding decisions. Focusing on health benefits of breastfeeding obfuscates the real issues facing women; indeed, "when [scientific] evidence is the focus of debates about breastfeeding, effective communication stalls and issues concerning sex inequity and its contribution to constraints on mothers' practices are neglected" (Hausman 2012, 23). What is important from the standpoint of social and political institutions is that breastfeeding is a lived reality for many women, and a society that fails to

accommodate breastfeeding mothers is a society that systematically disadvantages women on the basis of their maternity.

In the United States today, mothers of young children face many difficulties. In the United States, there is no guarantee of maternity leave. Most mothers have no guarantee of paid sick time. Postpartum Support International reports that 15-20% of new mothers experience either clinical depression or anxiety. Low-income women are even more likely to experience depression; one in four mothers in poverty suffers from mental illness (Center on the Developing Child 2009). Single mothers (approximately one in four mothers) are especially vulnerable to economic insecurity and childcare troubles (Wang, Parker, and Taylor 2013). In addition to these challenges, mothers who decide to breastfeed face public scrutiny, hostile workplaces, and difficulty accessing their children. It thus makes sense that some mothers, given a social and political context that does not support motherhood, might decide not to breastfeed. Breastfeeding is something that they can choose to skip—a task they can take off their already full plates. When Pam Carter interviewed women about breastfeeding, many of them reported feeling relieved that they did not have to breastfeed; "breastfeeding [was] depicted as a burden additional to many others" (1995, 50).

It is therefore worth exploring how the social and political context of women's lives affects their breastfeeding decisions. If institutions supported mothers in all areas of their lives, ensuring economic viability, high-quality and affordable childcare, access to paid maternity leave and sick time, and guarantees of pumping breaks at work, for example, women who wanted to breastfeed would be in a position to do so. In the context of institutions that do not robustly support mothers, on the other hand, breastfeeding might be impossible or just too difficult. It should be noted that my argument aligns with Maxine Eichner's model of the

supportive state (2010), in which she argues that the institutions of the state affect families' ability to provide care.

The political goal is for the rate of mothers who *want* to breastfeed to be as close as possible to the rate of women who *do* breastfeed, and likewise for the desired and the actual duration of breastfeeding to be as close as possible. The goal is not that all women will breastfeed, but rather that those who want to breastfeed are enabled to do so. Of course, some women will want to breastfeed and do everything they can to meet that goal, and still fail for reasons not solely due to lack of institutional supports. With institutional supports in place (including access to good breastfeeding information, lactation professionals, donor milk, etc.) the number of women who fall into this category will be lower, but never nonexistent. Currently, in the United States, only 32.4% of mothers met their intended exclusive breastfeeding duration (Perrine et al. 2012). That is, only one third of mothers breastfeed for the amount of time that they desire.[1] Even if some mothers end up weaning because the experience of breastfeeding is not what they expected (a change in desired duration), and if some mothers experience lactation failure, that still leaves a large proportion of mothers who are unable to breastfeed for as long as they want to. This is a political problem, and there are institutional solutions.

It is also important to remember that social support for breastfeeding mothers helps all women, even those who use infant formula and those who will never have children. As Bernice Hausman observes:

> If the particularity of mammalian sexual difference confers on women a greater biological burden in reproduction, we can choose to ensure that maternity does not hurt women's participation in civil society and the waged labor market; in other words, we

[1] Similarly, we want women to be able to have the number of children they desire, no more, no fewer—though even with widespread access to contraceptives, infertility will prevent the perfect realization of this goal (Esping-Andersen 2002). In the United States, average desired number of children for women is 2.5, while average number of actual children is 1.8 (Nishimura 2012).

> can work to ensure that support for breastfeeding does not suggest the need to cloister women among themselves in the home….Whether they do or do not work in the waged labor market, all mothers share some interest in increasing the social value of their work as family caretakers. All mothers would benefit from social recognition of the physical costs (and benefits) of biosocial maternal practices. (Hausman 2003, 5-6)

Even mothers who are not breastfeeding benefit from a society that values care work, and that does not condone discrimination against women based on their unique bodily capabilities. In this way, a society that supports breastfeeding workers improves women's position in society more generally, expanding the scope of women's autonomy and gender equality.

Theoretical Orientation

My theoretical orientation here is a liberal one, but it is a feminist liberal one that is critical of many liberal treatments of women's and mothers' political problems. Despite my criticisms of certain liberal arguments, my orientation is a liberal one because of the emphasis I place on women's autonomy: women should never be cajoled or coerced to breastfeed. I am most critical of those liberal arguments that frame women's issues within a negative liberty scheme; I argue that the mere absence of interference with regard to parenting and breastfeeding decisions is not enough. A society that tells women "you are free to choose to breastfeed," but whose institutions make it impossible for her to exercise this right, is not a just society—nor is it a society that lives up to liberalism's own ideals.

Because of this, I do not speak of breastfeeding within a rights framework. I am concerned that arguments about women's "right to breastfeed" will declare victory once legal rights are secured, absent consideration of the lived experience of breastfeeding mothers. I argue instead that breastfeeding is best conceived of as one of the central human capabilities in a liberal capabilities approach, following the logic of Martha Nussbaum. A woman's claim to the material conditions, institutional support, and full access to information under which breastfeeding is a

free choice, is a claim supported by the logic of central human capabilities. Breastfeeding falls under Nussbaum's central capabilities of bodily health ("being able to have good health, including reproductive health"), bodily integrity ("having opportunities…for choice in matters of reproduction"), emotions ("being able to have attachments to things and people outside ourselves; to love those who love and care for us"), practical reason ("being able to form a conception of the good and to engage in critical reflection about the planning of one's life"), and affiliation ("being able to live with and toward others, to recognize and show concern for other humans, to engage in various forms of social interaction") (Nussbaum 2000: 78-9). Moreover, thinking of breastfeeding as a capability comports with intuitions about breastfeeding—most women have a physiology that supports lactation after the birth of a baby.[2] Lactation is a potential use and capability of breasts that women are empowered to use to nourish their babies, should they decide to.

The benefit of thinking about breastfeeding within a liberal capabilities approach is that its rhetorical emphasis is appropriate both in its focus on securing the social conditions of realizing capabilities and in its insistence on achieving capability rather than functioning. A capabilities approach insists that "for political purposes it is appropriate that we shoot for capabilities, and those alone. Citizens must be left free to determine their own course after that" (Nussbaum 2000: 87).

> For it is all about respect for the dignity of persons as choosers. This respect requires us to defend universally a wide range of liberties, plus their material conditions; and it requires us to respect persons as separate ends, in a way that reflects our acknowledgment

[2]This is not to suggest that women who have medical conditions that preclude lactation or women who have trouble lactating are somehow lesser women or lesser humans. But typical female physiology supports lactation, and indeed, under the proper conditions, the vast majority of women are capable of lactating successfully. Just as the central capability of "bodily health" does not protect us against all sickness, the capability of breastfeeding does not protect us against all instances of unsuccessful breastfeeding outcomes.

> of the empirical fact of bodily separateness, asking how each and every life can have the preconditions of liberty and self-determination. (Nussbaum 2000: 59-60)

Once the material, social, and cultural conditions for breastfeeding are in place, it is the fundamental liberty of each woman to decide whether to exercise this capability. The capabilities approach does not aim for functioning—women actually breastfeeding—but rather their access to the capability. It may be appropriate in certain contexts (such as carefully considered public health promotions) to try to *persuade* women to decide to breastfeed, but the *political* goal is capability only. Theoretically, this approach is driven by a profound respect of each individual actor, and it requires that we trust women and women's decisions. It may seem trite to impress that women should be trusted, but given the history and context of breastfeeding decisions (which I discuss below), trusting women is somewhat radical. At the same time, "this very respect means taking a stand on the conditions that permit them to follow their own lights free from tyrannies imposed by politics and tradition" (Nussbaum 2000: 69). The capabilities approach's focus on what "individuals are actually able to do and to be" is the appropriate political goal for breastfeeding. The goal is that women can actually, in the context of their lives, breastfeed their babies. Thus, it is the responsibility of the state to guarantee the means and resources necessary for women to exercise their capability to breastfeed. It is a facet of the human capability of control over one's reproduction and the use of one's body.

I want to be clear that I am not justifying support of women's ability to breastfeed on the basis of the health of breastfed children. The reasons for this are threefold: as stated above, I agree with Hausman (2012) that a focus on scientific evidence for breastfeeding distracts debate away from the more important issue of the realities of breastfeeding mothers' lives. Secondly, I do not believe that the child's health justifies interfering with women's autonomy. Certainly there are cases in which the child's health will require breast milk (imagine a premature or sick

infant); our obligation to that child can be fulfilled through ensuring access to donor breast milk (I expand on this theory and on respect for the child's health in chapter 3). Finally, I believe it is dangerous to justify a woman's actions on the basis of her child's health. Justifying a practice on the basis of its being important to women is enough. We need not deepen our justification by saying it is also good for children; to do so endangers the position of women who do not want to breastfeed and, in the extreme, risks reducing mothers to caregiving objects. I trust women; I trust mothers. Mothers should have access to the best information about children's health and breastfeeding, and most mothers will take this information into account when they make infant feeding decisions. Politically, though, the goal is that mothers have access to a context in which they can decide to exercise their capability of breastfeeding.

Historical Overview

Mothers have been subject to demands to breastfeed for centuries. Cotton Mather, in 1741, wrote that "She is not a Dame that shall scorn to nourish in the World, the Children whom she has already nourish'd in her Womb," exhorting women to "give suck to their young ones" (1741, 105–6). In 1762 Jean-Jacques Rousseau lamented those mothers who did not "deign to nurse their children" (1762, 46). Breastfeeding, in this paternalistic scheme, is part of the "duty" of motherhood.

Recall, though, that before the advent of safe infant formula in the twentieth century, there was no safe alternative to breast milk for infants. At the end of the 19th century, most women weaned their babies by the time they were three months old, and a full 13% of infants did not live to twelve months (Wolf 2006, 173). Babies who were fed cow's milk routinely died of diarrhea. When women were encouraged to breastfeed their infants, it was part of a concerted effort to decrease infant mortality, even as it was simultaneously part of a paternalistic treatment

of women as mother-objects.

Moreover, before the advent of safe infant formula, breastfeeding was part of a complex history of class and race through the practice of wet nursing. “Wet nurses had such dismal reputations that when a doctor suggested a family hire one, the recommendation almost always was met with dismay. The consternation was due largely to class differences—physicians and the families who hired wet nurses were well-off, while wet nurses tended to be poor women in unusually desperate circumstances” (Wolf 1999, 97). A desperate mother who became a wet nurse was often required to live with her employer and to send her own baby elsewhere—and likely, without mother’s milk—to die (Wolf 1999, 102). The history of wet nursing is a history of exploitation, class callousness, and disregard for the life of disadvantaged infants.

In the late 19th century, during the throes of urbanization, women of all classes began to claim that they were not making enough milk.

> This oft-heard, late 19th century complaint among women of all classes and ethnic groups coincided with the invention of infant feeding schedules…. As one typical doctor urged, ‘First, we must teach regularity, the cultivation of accurate habits in the baby; make a machine of the little one. Teach it to employ its various functions at fixed and convenient times.’ Thus, prescheduled, widely spaced feedings were the likely cause of women’s complaints of inadequate milk, for human lactation is governed by the adage ‘supply equals demand’—the less opportunity a baby is given to suck on her mother, the less milk her mother’s breasts will produce. (Wolf 2006, 175)

Doctors, not realizing that insufficient milk was caused by changes in feeding schedules, blamed women’s “overeducation,” stunted reproductive systems, and even human evolution. Women, it seemed, could no longer succeed at producing milk. Breastfeeding rates were low, and many pediatricians began to recommend artificial feeding to women, questioning women’s ability to provide nourishment to babies. One pediatrician warned, “The fact that the fluid comes from the maternal mammary gland does not make it good. It may be nothing but water” (Wolf 2006, 176). Early pediatricians helped develop artificial feeding regimens that would not kill infants (largely

through pasteurization, refrigeration, and pure food laws, but also through medicalization of infant "formulas" of proteins, fats, and other nutrients) (Wolf 2006, 176). In the first half of the twentieth century, breastfeeding became a partial casualty of a medical institution that claimed scientific knowledge that the expense of women's capabilities.

For many feminists, particularly those of the second wave, breastfeeding was therefore inextricably part of a larger and oppressive narrative. Breastfeeding was something that women were criticized for not doing, or for not doing properly. Moreover, for the women who did breastfeed, it was part of a narrative in which women were expected to stay at home and to find fulfillment through housewifery. Especially before the rise of personal breast pumps in the 1990s, the decision to breastfeed seemed (even if women could hand express milk without a pump) coequal with the choice to stay at home (Lepore 2009: 34). La Leche League, the first major breastfeeding advocacy and education organization, espoused this view in 1976 when they wrote that "the nursing mother, of necessity, stays at home" (1976, 115). For some women, then, breastfeeding was seen as an oppressive activity to be avoided; Shulamith Firestone argued that "the end goal of feminist revolution must be…the elimination of…sex distinction itself"—that is, a society in which "the reproduction of the species by one sex for the benefit of both would be replaced by…artificial reproduction" (1970: 11). For these (and also for less radical) feminists, the advent of a safe form of artificial infant feeding in the middle of the twentieth century was emancipatory, lightening their work loads and allowing them to work outside the home (Carter 1995). Likewise, today, some feminists like Emily Matchar contend that breastfeeding has become part of a mode of "hyperintensive parenting" that is unfriendly to women (Matchar 2013, see also Badinter 2011).

In the 1980s, proponents of difference feminism—a variant of feminism which stresses the unavoidable biological difference between men and women—attempted to overcome the view that mothering, including breastfeeding, is oppressive, arguing instead for a society and for social policies that accommodate (and even celebrate) women's biological difference.[3] Other feminists are concerned that this deification of difference smacks of biological determinism, that celebrating difference means that woman are told their proper role is as a mother. Worse, special treatment for women (in the form of, say, special legal protections for pregnancy or breastfeeding) could lead to discrimination. Moreover, any theory that promotes biological essentialism—seeing women as "different" and emphasizing maternalism—concerns feminists who fear that women who stay at home breastfeeding (a "choice" that they see as constrained and socially constructed) are perpetuating gender inequality, serving patriarchy, and diminishing their own future life prospects. "The question of who earns the family's income," Okin writes, "has a great deal to do with the distribution of power and influence within the family, [and on] the distribution of other benefits, including basic security" (1989: 135). Thus the decision to breastfeed—insofar as that decision means a woman will stay home, and perhaps insofar as that decision puts her in a disadvantaged position in the workplace—is sometimes seen as detrimental to women's larger security.

In recent years, as gender equality in the home has become a more widespread goal, breastfeeding also raises concerns because it is a task that cannot be shared.[4] If the feminist ideal is gender-neutral, halved caregiving, breastfeeding challenges that ideal. Men and women have, indeed, been moving towards a more equal division of paid work and care work in the past

[3]See, on motherhood, Ruddick 1989.

[4]Lesbian couples can share the task of breastfeeding, but even then, many do not (Moon 2012).

decades. A Pew study reports that "On the home front, men are spending more time doing housework than they did in the 1960s, while women have cut back their hours in this area. Men's housework time has doubled from four hours per week in 1965 to about nine hours per week in 2011. Women, meanwhile, have cut their housework time almost in half…. Fathers have nearly tripled the time they spend with their children (from 2.5 hours in 1965 to 7.3 hours today)" (Parker and Wang 2013, 32, 33). But the task of breastfeeding cannot be halved—even if the task of feeding the baby is shared through bottle feeding breast milk, the mother must still bear the burden of pumping that milk.

> The problem arises because breastfeeding is sex-specific, and therefore challenges the feminist principle of gender-neutral childrearing. It is an even more difficult problem than pregnancy because whereas pregnancy is necessary for childbearing, many do not consider breastfeeding to be critical to an infant's survival, at least in industrialized countries. (McCarter-Spaulding 2008, 207)

In a culture that increasingly idealizes shared "co-parenting," breastfeeding can be problematic because of the demands it makes on the mother's—but not the father's—time. For an equal split of caregiving in a breastfeeding family, fathers would have to complete more than half of the non-breastfeeding tasks. (I explore this issue at length in chapter 1.)

In addition to some feminists' criticism of gender egalitarianism in breastfeeding families, some are likewise critical of pro-breastfeeding activism. As scientific evidence about the superiority of breastfeeding has amassed, public health campaigns urging women to breastfeed have become common. Some feminists charge that breastfeeding advocacy can cause guilt or shame among mothers who do not breastfeed, leading some feminists to criticize the entire practice of breastfeeding advocacy, while others interrogate how to encourage breastfeeding in ways that do not guilt or shame mothers (Kukla 2006, Labbok 2008, Taylor and Wallace 2012a and 2012b). Others, like Pam Carter, consider the medical or political narrative of

seeking to increase rates of breastfeeding to be patriarchal, ignoring the experience and problems of infant feeding from the woman's perspective (1995).

It is clear that breastfeeding raises complex issues for feminists and gender equality, issues that cannot be fully addressed in the scope of this dissertation. It is important to note that the focus of this dissertation is on the policies that are in place to support mothers who decide to breastfeed, not on a patriarchal or pronatalist goal of "increasing rates of breastfeeding" without considering how to make this decision a more feasible one for women to make. That is, the goal of this dissertation is to theorize how to ensure that woman are able to exercise the capability of breastfeeding.

Respecting Formula-Feeding Mothers

While the focus of this dissertation is mothers who want to breastfeed, it is important to address the position of formula-feeding mothers for a number of reasons. The capabilities approach demands that the dignity and well-being of *each* person is considered—formula-feeding mothers' capabilities must be considered separately from those of breastfeeding mothers. It is also important to consider the pressures on formula-feeding mothers because I do not want to permit imposition on women's autonomy—I do not want women to be or to feel coerced into breastfeeding. Breastfeeding advocates should fight against institutional and cultural constraints that prevent women from breastfeeding, but should not seek to convince every woman to (continue to) breastfeed. Plenty of women quit breastfeeding because they just hate it (for whatever reason); we must respect this decision both theoretically (as an expression of the mother's autonomy and dignity) and also pragmatically (if the mother hates breastfeeding, the mother-child relationship will be strengthened by switching to infant formula).

Just as I argue that women's official "right" to breastfeed may not actually be practicable if the conditions aren't in place for them to feasibly do so, it is also important that mothers don't retain an official "choice" to formula feed while being actively pressured to breastfeed and shamed for not doing so. It is central that women are not shamed for not breastfeeding. Taylor and Wallace address this issue in detail:

> If breastfeeding promotion is to take seriously the challenge of shame—as we argue that it must if it is to be truly feminist—promoters need to commit to three significant conceptual shifts. First, breastfeeding promoters must place mothers at the center of our efforts rather than infants. The interests, needs, and well-being of mothers must be the objects of our promotion. Second, we must take the lived experiences of mothers as seriously as we take evidence-based biomedical data. Third, we need to approach our understanding of women's infant feeding choices aware of both the constraints that women face in developing their own infant feeding plans and the ways in which these constraints may recommend something other than exclusive breastfeeding. (2012b, 201)

What's so tricky here is that formula-feeding mothers are likely to feel shame because infant feeding decisions are "irreducibly moral and the ways in which women can be judged, or indeed judge themselves, to be deviant are legion" (Murphy 1999, 188). So when policies are introduced that provide the conditions under which mothers who want to breastfeed can be successful at it, formula-feeding mothers are at risk for feeling an increase in pressure on them to breastfeed or judgment of them for having not done so.

Some level of guilt is likely to always be in play: medical and public health professionals are obligated to give people evidence-based health information from a medical perspective, and will certainly encourage pregnant and new mothers to breastfeed. That pressure is appropriate insofar as it is given in a way that is responsive to the constraints on women's lives (Labbok 2008). This guilt does not mean that feminists must lament that women are given information about the scientific case for breastfeeding. What is key is that this education takes place within feminist discussions about the structural impediments to breastfeeding. "Education about the

biological benefits of breastfeeding without real social change will only create the 'exhortation to breastfeed'…that many women chafe against, and rightly so" (Hausman 2003, 227-8).

It is difficult for a liberal feminist to know how to handle this conundrum: the very policies that breastfeeding mothers *need* have the potential to make formula-feeding mothers feel pressured, guilty, or ashamed; we want to respect the dignity and well-being of both breastfeeding and formula-feeding mothers. Taylor and Wallace suggest that some level of guilt may be appropriate (or at least unavoidable)—it is *shame* that feminists need to guard against (2012a). Whereas guilt causes mothers to feel that they have broken a rule or caused harm, shame causes mothers to judge themselves as deficient, as failures (Taylor and Wallace 2012a, 85). Evidence-based medical information might cause formula-feeding mothers to feel guilt, but shame is caused by something bigger than mere information.

While the policies I am arguing for in this dissertation, such as pumping breaks for breastfeeding workers, may increase the perceived pressure to breastfeed felt by formula-feeding mothers, it is important to note that the these policies do not inflict shame. I would like to suggest that what causes formula-feeding mothers to feel shame is not medical evidence of breastfeeding's superiority or the existence of accommodations for breastfeeding mothers, but rather a culture that is preoccupied with judging mothers, with criticizing mothers' choices, with claiming that "good" mothers are self-sacrificing mothers. In the context of this highly judgmental culture in which all mothers feel like deficient mothers, any discussion of breastfeeding might bring up feelings of guilt or shame. But this is a symptom of a much larger problem, and it is the larger problem that feminists should be fighting against.

Respecting the dignity and well-being of all women requires battling against cultural ideals of "good motherhood." It means providing robust economic, medical, and community

support for mothers of all kinds and respecting mothers' decisions. It means giving women reproductive agency, whether through access to contraception and abortion, excellent medical care and information, and knowledge on best practice for breastfeeding success. It means recognizing the constraints on mothers' decisions, including infant-feeding choices, and the ways in which the realities of their lives might lead them to prioritize other factors over breastfeeding. It means that feminists should be fighting battles about improving the material conditions of women's lives, rather than on depriving women of supportive policies on the amorphous basis of avoiding guilt or shame.

One concrete recommendation this discussion suggests is that, when breastfeeding mothers could be accommodated through policies that help all women (or parents) or through breastfeeding-specific policies, breastfeeding-neutral policies should be preferred. For example, breastfeeding workers can be accommodated primarily through maternity leave or through policies allowing milk expression at work; maternity leave is preferable because it can provide benefits to all mothers and children, not just to those who decide to breastfeed. In thinking about how to accommodate breastfeeding mothers who are called for jury duty, courts could either allow breastfeeding mothers to pump on duty, allow breastfeeding mothers to delay their summons, or allow all caregivers of young children to delay their summons. The preferable policy here is the latter, since it would benefit all parents and children, rather than just breastfeeding mothers. I would like to point out, though, that I do not think it is the case that sex-specific breastfeeding policies are inappropriate (in fact I argue at length that they are necessary in chapter 1), but that if there are two policies that are equally helpful from the standpoint of breastfeeding mothers, it is appropriate to prefer the policy that is helpful to the largest number of mothers or parents.

Outline of Chapters

The chapters in this dissertation focus on central issues concerning women and the politics of breastfeeding. The focus remains squarely on the breastfeeding mother, rather than treating the mother as an invisible subject in service to the well-being of babies, as much literature on breastfeeding does. Much literature views breastfeeding as a subject primarily about babies—babies as beneficiaries of the nutrition and nurture of breastfeeding mothers. I urge a shift to breastfeeding as a women's issue, as an issue that should demand attention from politics and from the state insofar as that attention is necessary for *women's* well-being.[5] I urge away from a focus on a contented baby at a faceless and disembodied breast, toward a focus on the woman herself.

In the first chapter, I analyze the needs of breastfeeding workers and articulate an argument for robust state support for accommodating breastfeeding in the context of paid work. I analyze theories of gender and the welfare state and discuss how equality-promoting welfare models should accommodate breastfeeding, both through parental leave and at-work policies. I offer a typology of programs supporting breastfeeding workers and consider which policies are most appropriate within an equality-promoting welfare model.

In chapter 2, I turn to the issue of breastfeeding in public, articulating a conception of an equal and autonomous public sphere in a liberal society. I describe three main ways in which breastfeeding mothers respond to the antipathy of the public sphere: exclusion, accommodation, and affirmation. In the final section, I outline an ideal of public and private spheres defined by

[5]Throughout my arguments, it should be noted that I do believe breastfeeding is in the interest of babies and will serve babies. But from the standpoint of the political, a focus on the well-being of mothers is more appropriate, as the well-being of babies follows from the well-being of the mother. In cases where a baby's health is compromised and the mother is not breastfeeding (a separate question from the issues on which I focus here), we should establish structures that can guarantee access to pumped breast milk for the baby.

equality and autonomy, a public sphere in which breastfeeding mothers' experience of public space and public life is not distorted by the discomfort of others.

In the final chapter, I show that the state must privilege maternal access to babies in order to achieve a society that allows women to freely decide to breastfeed; I insist that the ability to pump breast milk cannot be a substitute for access, despite popular belief to the contrary. I explore the implications of maternal access through detailed exposition of two cases of maternal separations—custody battles over breastfed children and maternal incarceration.

CHAPTER 1. WELFARE STATES AND BREASTFEEDING WORKERS: SEX-SPECIFIC POLICIES IN GENDER EGALITARIAN MODELS

Dating back at least to Orloff (1993), feminist literature on the welfare state has considered women's access to paid work a key measure of women's social rights. In the case of mothers, access to paid work requires the ability to combine work and family. Combining work and family involves a special set of challenges in the case of breastfeeding—mothers and children must be physically together, or mothers must have time and space to express milk—yet breastfeeding has mostly been ignored, even among welfare state authors who focus explicitly on women and the family.

The purpose of this chapter is to interrogate the role of the state in providing institutional support for breastfeeding workers. By "breastfeeding worker," I mean a breastfeeding mother who is not leaving the labor force, whether she is on maternity leave, reduced hours, or flex-time, working from home with a baby on her lap, pumping at the office, or has made other arrangements. The issue of institutional support for breastfeeding workers is an important one, since female labor force participation is a key metric of women's position in society and access to paid work is a key dimension of welfare state policy (Okin 1989; Orloff 1993). Thus, the focus of this paper is on helping those women who decide to breastfeed to be able to meet their own goals.

In this chapter, I first present information on the needs of breastfeeding workers and the social realities they face in the United States. Second, I analyze theories of gender and the welfare state and, in particular, the equality-promoting welfare model. I draw attention to the

ways in which sex-specific policies, such as those supporting breastfeeding workers, present an ideological problem for the equality-promoting welfare model. Then, I tackle what has been called the "sameness/difference debate" as it applies to breastfeeding workers and the equality-promoting welfare model. From there, I offer a typology of programs supporting breastfeeding workers including equality- and breastfeeding-promoting parental leave. I consider the unique needs of non-normative breastfeeding mothers, including single breastfeeding mothers and co-breastfeeding queer parents. I close with a tentative formulation of an equality-promoting welfare model that also protects the sex-specific needs of breastfeeding workers.

The lack of attention to breastfeeding in both feminist and traditional political economy literature on the welfare state is not surprising. Formulating a theory of state involvement in reconciling breastfeeding with labor force participation is difficult terrain for feminists; a tension is often perceived between the goal of gender equality and the practice of breastfeeding. Breastfeeding a child places high demands on the time and availability of the mother; newborns nurse as often as once every hour or two, keeping their mothers on call.[6] As babies get older, their demands wane, but it remains an intense relationship. Women who work away from their babies while maintaining a commitment to breastfeeding spend a good deal of time expressing milk for the time they will be gone. They must find time and space to express milk at work and navigate the social dynamics of pumping in the workplace. For feminists and others who value gender equality, this is a difficult situation: how can feminists embrace a practice that places so many demands on the woman's body and time, especially when it is possible to simply opt out through the use of infant formula?

[6] "It is normal for these babies to have a breastfeeding session of one or two breastfeeds as often as once every 1 hour 50 minutes, or as widely spaced as once every 6 hours" (Kent 2007, 568).

In political economy literature, there is a concern that women who are out of the labor market to accommodate maternity are less likely to reenter the paid labor force; this is problematic from the perspective of sustaining a generous package of public services and entitlements, because women workers are needed to pay into the system. It is also problematic from the perspective of gender equality, since a weakened labor force attachment puts women in a vulnerable financial position, and since time out of the formal labor market affects their lifetime earning capacity relative to men (OECD 1995; Fodor and Kispeter 2014). There is therefore a legitimate concern that breastfeeding workers' needs must be met in a way that does not harm their long-term careers. But recent research on the length of parental leave is calling into question the established wisdom that "too long" parental leaves are bad for gender equality (e.g. Keck and Saraceno 2013). Feminists must continue to evaluate the effect of leave provisions on mothers' economic security.

While breastfeeding rates declined rapidly in advanced industrial countries in the first half of the 20th century, the social and public health costs of this shift have brought a shift back towards public medical encouragement of exclusive breastfeeding for the first six months (see figure 1 on page 141). Within this medical culture of encouraging breastfeeding, mothers overwhelmingly desire to breastfeed for the early months, even though many (66%) wind up not reaching their goals (Perrine et al. 2012). In the United States, 83% of pregnant women intend to breastfeed, 60% of whom intend to exclusively breastfeed their babies. More than 85% of those who plan to breastfeed exclusively intend to do so for three months or more (Perrine et al. 2012, 56-7). For many women, this is a decision based on a scientific consensus that breastfeeding is

the healthiest choice for both mother and child (Ip et al. 2007).[7]

As I argue in the introduction, I do not want to justify social support of breastfeeding mothers on the basis of the health of their children. But this scientific evidence remains relevant insofar as it affects individual women's decisions. The World Health Organization, the American Academy of Pediatrics, the United States Surgeon General, and health authorities around the world agree that the optimum feeding schedule for infants is exclusive breastfeeding for the first six months of life, followed by breastfeeding with complementary foods until at least twelve months, with continued breastfeeding for as long as mutually desired by mother and child (at least two years for most agencies).[8]

Many mothers want to meet these guidelines, so it is reasonable to inquire whether a particular social welfare regime enables mothers to meet them. Beyond health, there are additional reasons to choose breastfeeding; it is far cheaper for both the family and the state. In countries like the United States where unfriendly policies make mothers "choose" between basic commitments to young children and employment, there are also clear costs in terms of female labor force participation, with the United States having one of the lowest rates among advanced industrial countries.[9]

Whatever reasons mothers have for breastfeeding, women's intentions to breastfeed make

[7] Researchers have shown, for example, that breastfed infants experience reduced incidence and severity of diarrhea, lower respiratory infection, lymphoma, otitis media, and chronic digestive diseases, as well as reductions in mortality. They have also shown improved health outcomes for mothers who breastfeed, including improved post-partum health, weight loss, and blood pressure, and lower incidence of breast, uterine, and cervical cancer, as well as of osteoporosis. For a comprehensive review of the health benefits of breastfeeding, see Ip et al.. 2007.

[8] WHO 2007; AAP 2005; U.S. Department of Health and Human Services 2011.

[9] In 2004, in the United States 52% of mothers with children under 3 were in the paid work force, compared to 77% of mothers in Denmark and 72% in Sweden. (OECD, Starting Strong II, p86, 2006)

it clear that it is imperative for feminists to make the reconciliation of breastfeeding and gender equality a priority in our theory and in our practice. To achieve a social context in which women have the ability to decide to breastfeed, the state must take positive steps to support breastfeeding. This is especially true because the inequities that arise from breastfeeding are not easily addressed by individual action. When mothers fail at combining work with breastfeeding despite their preferences and intentions, it is not a personal failure on the women's part; it is a social failure to support breastfeeding workers and their babies. The only way to create a social context that supports women's capability of breastfeeding is for the state to establish robust institutional supports for breastfeeding workers, such as guaranteed breaks to express milk, assistance with retraining and reintegration for mothers reentering the paid work force, entitlement for parents to work flex-time or part-time, and longer maternity leaves.

I argue that a welfare model that encourages a gender-egalitarian split of work and care is necessary, but that the ideal must be clarified and expanded with regard to its position on sex-specific policies benefiting mothers. That is, welfare state ideals that privilege gender equality are appropriate, but the focus on gender equality cannot come at the expense of policies supporting sex-specific tasks like breastfeeding. Even in an equality-promoting welfare model, mothers will continue to demand "special treatment"— welfare state theorists ignore this continued need for special treatment at the risk of sabotaging their own goals, and at the risk of failing to provide mothers with a social context that respects their fundamental human capabilities.

Part 1: Background and Current Realities

In 1975 in the United States, 34% of mothers with children under three were employed, a figure that rose to around 60% by the mid-1990s (U.S. Bureau of Labor Statistics 2009). It is

commonly observed that this increase in female labor force participation has created new needs such as the needs for childcare and maternity leave (Esping-Andersen 1996). Along with female labor force participation, breastfeeding rates have been increasing steadily since the 1960s, generating a new set of challenges for mothers in the formal labor market (Figure 1, appendix A). The United States has lagged on accommodations of any kind for working mothers; breastfeeding workers, therefore, are not well protected by welfare state policies.

The body's supply of breast milk is determined by the demand of the infant. The more a baby suckles at the breast, the more milk a mother produces, and vice versa (Kent 2007). What this means in practice is that a new mother must feed her infant every two to three hours during the day in order to keep her milk supply at a level that will meet the baby's nutritional needs. In the absence of her baby, a mother can express milk by hand or with an electric pump, the cost of which is about $300 for a personal pump or about $50 per month to rent a more efficient hospital-grade pump.[10] A breastfeeding mother who works away from her baby will need to take two, perhaps three, 20-30 minute breaks during the day to pump. She will need a clean, private place in which to do this with a chair and electrical outlet. She will need a place to wash the pump when she is through and a refrigerator in which to store the expressed milk.

Since workplaces and work schedules have traditionally been designed for male workers, it is unsurprising that many women find that their employers do not meet their needs as a breastfeeding worker. Beyond the considerable logistical difficulty of pumping at work, women also must deal with the social and professional cost of the decision; it may be awkward for a woman in a male-dominated workplace to even broach the topic of breastfeeding or pumping

[10] It is important to note that pumping is a less efficient method of milk expression than directly nursing a baby. Indeed, "making enough milk is a common challenge for moms who are exclusively pumping" (La Leche League 2010, 342). This means that even mothers with ideal pumping conditions at work may face problems.

with a male manager, or she may face harassment about pumping from coworkers. Pumping does not provide the same positive emotional feedback that nursing a baby does, is less comfortable, and takes longer.[11] For all of these reasons, mothers who work outside the home are less likely to breastfeed; Laura Duberstein Lindberg found that women were more likely to stop breastfeeding if they were at work than if they were not and that there is an increased likelihood of stopping breastfeeding in the 3-month interval marking a woman's entrance to employment (Duberstein Lindberg 1996, 248). Moreover, she found evidence that women who enter employment when their babies are older—when breastfeeding is well-established and less frequent—or who enter part-time employment are more likely to continue breastfeeding while working (248). This mismatch between breastfeeding and the formal labor market is echoed by Biagioli, who found that though working and stay-at-home mothers initiate breastfeeding at the same rate, the rate of breastfeeding declines sharply in mothers who return to work (Biagioli 2003).

An overview of work policy as it pertains to motherhood is instructive. In the United States, women are not entitled to any paid maternity leave, though employers of full-time salaried women often offer a period of paid leave. The Family and Medical Leave Act of 1993 (FMLA) guarantees many parents in the United States an unpaid job-protected leave of 12 weeks; however, only those who are employed full-time by public agencies or private companies with at least 50 employees, and who have worked for the employer for twelve months are eligible for the leave.[12] Murtaugh et al. calculate that, as of 2000, only 56.3% of privately employed women with children aged 18 months or younger were entitled to FMLA leave time (2011, 219).

[11] For an in-depth discussion of pumping versus breastfeeding, see chapter 3.

[12] Family and Medical Leave Act of 1993, Pub.L. 103–3, 107 Stat. 6 (1993).

In 2010, the Patient Protection and Affordable Care Act (ACA) Section 4207 "Reasonable Break Time for Nursing Mothers" established a statutory right for some breastfeeding mothers to unpaid breaks "each time such employee has need to express the milk" until the child is one year old.[13] It does not quantify the amount of time that must be allowed for this purpose. Similar to the eligibility requirement for the FMLA, this statutory right to breaks is granted to non-exempt workers of companies with more than 50 employees. Interestingly, this law as written does not provide protection for women who want to nurse their babies directly rather than to pump, since the requirement refers only to the "express[ion of] breast milk for her nursing child." Also as of 2010, the tax code was amended to allow women who submit itemized tax deductions to deduct the cost of breast pumping equipment, or to use their tax-advantaged medical savings accounts to pay for breast pumping equipment. Still, these benefits do nothing for the many poor working mothers who cannot come up with the upfront cash to purchase pumping equipment.

What are the different challenges faced by breastfeeding workers depending on the type of work they do? Gendered occupational segregation in the United States remains stark: 87% of primary school teachers in 2012[14] and 91% of nurses in 2011[15] were women (see also Charles and Grusky 2004). While these traditionally female jobs ultimately restrict women's financial security (through limited earning capacity and restricted career advancement),[16] schedules are

[13] Patient Protection and Affordable Care Act, Pub.L. 111–148, 124 Stat. 119-1025 (2010) at 459.

[14] World Bank 2014.

[15] U.S. Census Bureau 2013.

[16] "Women pay a steep price for jobs not framed around masculine norms….Nearly 70 percent of the full-time female labor force is in low-paying occupational categories….Nor do traditionally female jobs offer much chance of advancement" (Williams 2000, 83).

often more compatible with children's school hours, established part-time tracks are more available, and family leave is often more easily accommodated. These jobs have historically secured for women "dependable amounts of time for family life" (Williams 2000, 82).

But the expectations for these jobs were solidified in the post-war years during historically low levels of breastfeeding and are particularly difficult for breastfeeding workers. The work realities of both teachers and nurses, for example, are unaccommodating of the needs of breastfeeding workers: a teacher cannot leave her class unattended to go pump milk, and there are no places for her to do so; a nurse cannot leave her patients unattended. The break time requirements of the ACA do not apply to teachers or nurses if they are salaried (exempt). The ability to pump at work is currently contingent upon workers not being solely responsible for the care of others—on the worker's ability to be an unencumbered individual. Many traditionally female jobs, which have an element of care, do not allow workers this flexibility. The increase in the number of women who breastfeed is changing the established wisdom about which jobs are "family-friendly"—today, breastfeeding workers may be better accommodated in a traditionally male office job (with their norms of workers as unencumbered individuals) than they are in traditionally female jobs.

Making workplaces friendly to breastfeeding mothers is difficult in part because managers and bosses, more likely to be older and male,[17] may be less likely to understand and empathize with their needs.[18] Chow and Olson (2008) find that most managers do not know if a company policy on breastfeeding exists and that they have mixed feelings on the need for such a

[17] 95% of Fortune 500 CEOs, 83% of Fortune 500 board members, and 78% of all senior managers are men (Parker, Horowitz, and Rohal 2015).

[18] This is especially true because of generational change: if a young mother is employed by an older man, he was socialized in an era with significantly lower rates of breastfeeding. See figure 1 in appendix A.

policy. Leaving the negotiation of breastfeeding to individual women and their bosses therefore invites conflict and ensures some women will be unsuccessful, requiring that they choose between breastfeeding and work.

Quitting breastfeeding upon returning to work brings women the relief of not fighting against the status quo of the ideal-worker norm; a mother who decides to give up rather than fight a male manager who does not understand her needs and a workplace environment that is not designed around her needs is choosing not to oppose the "built-in headwinds" that discriminate against women at work .[19]

A final note about the realities of breastfeeding in the United States today: single mothers, low-income mothers, and mothers of color are much less likely to breastfeed than their more privileged counterparts (Best Start 2014, CDC 2004). The culture of breastfeeding is, indeed, a powerful story of intersectionality. The position of marginalized mothers today is one in which they often must choose between financial security and the ability to breastfeed. This is a tremendously vulnerable position.[20] They are, therefore, in dire need of welfare state protection.

Consider a low-income mother in hourly work. She may be unable to take regular breaks to pump milk, and it is also likely that there is not a clean and private place for her to pump or to store her milk. She might try to run to her car (if she has one) or to a restroom to express milk when she has a chance, but a busy, physically demanding, or mobile work environment might make it impossible to get away. She might try to continue breastfeeding even though the

[19] See Williams 2000, 38; Griggs v. Duke Power Co., 401 U.S. 424 (1971).

[20] Because of the high cost of basic quality daycare in the United States, as well as the lack of protections for breastfeeding workers, including such basic policies as a few months of paid leave after birth, this zero sum choice between work and breastfeeding actually extends far up into the middle class. Even some families with two earners in fairly stable jobs cannot afford to take unpaid leave or to pay the cost of daycare, which rivals college tuition in many states (Child Care Aware of America 2013).

conditions are less than ideal, but failure to find time to pump milk might cause her to develop clogged milk ducts or mastitis, a serious infection which would cause her to miss work. If she does not get sick, failure to pump will cause her to lose her milk supply. Unless she has a rare employer who is sympathetic and understands the needs of breastfeeding mothers, she is unlikely to continue breastfeeding after returning to work.

Moreover, low-income mothers *are* informed about the benefits of breastfeeding; a 2000 study by Guttman and Zimmerman found that 72.4% of low-income mothers who formula fed believed that breastfeeding provides "a lot" of benefits for infants and 56.4% believed that breastfeeding prevents the infant from illness (2000, 1462). One mother explained, "If I could, I would, but it seems impossible" (1466). So it is not true that low-income mothers do not understand the benefits of breastfeeding; rather, the constraints in their lives prevent them from acting on that knowledge.

The current system, which leaves the reconciliation of work and breastfeeding to individual mothers, does not respect the dignity of mothers. Their fundamental human capabilities, including the capability of breastfeeding, are not being met.

Part 2: The Gendered Welfare State and the Politics of Sex-Specific Policies

The welfare state regimes that developed after World War II were designed to allow a male breadwinner with a stay-at-home wife to achieve a family wage with benefits that would support his family (Esping-Andersen 1990, Orloff 1993, Huber and Stephens 2001). The traditional family of the post-war welfare state ideal has largely disappeared; in the United States in 2013, 61% of mothers with children under the age of three were in paid work.[21] The post-war welfare state is no longer viable because of four major changes: slowdown in economic growth

[21] U.S. Bureau of Labor Statistics 2014, tables 5 and 6.

due to the shift from manufacturing to service economy, expansion of government commitments and welfare state maturation, demographic change, and the transformation of household structures (Pierson 2001, 83).

Each of these changes has gendered elements. The shift from manufacturing (a traditionally male industry) to service (a traditionally female industry) coincided with an increase of female labor force participation, and even today most service jobs are occupied by women (Charles and Grusky 2004). The expansion of government welfare commitments is partly caused by demographic changes; as the populations age (creating higher healthcare and pension expenditures) and fertility rates fall (decreasing the amount that is paid into the system), the fiscal pressure on the welfare state has increased. It is clear that these factors are closely linked to increased female labor force participation and the subsequent decrease in fertility. In most countries, the decrease in fertility rates has followed on the heels of increased labor force participation for women. As Pierson observes, "these changes have generated an intense perception of mismatch between the needs of new households and the capabilities of old welfare state structures" (2001, 98). As such, the "old" welfare state model (the male-breadwinner model) is unable to respond to new social needs. Esping-Andersen thus argues that "a rewritten gender contract is an indispensable ingredient in any credible post-industrial welfare formula" (2002: 66). A welfare state that is viable in the long term requires a new understanding of gender and gender roles.

It is clear that public support of working mothers is an essential facet of the rewritten gender contract. Policies supporting working mothers have the potential to address many of the problems facing welfare states. In many countries, women still constitute an untapped labor reserve that can generate revenue to fund welfare state commitments, and among OECD

countries the United States is at the low end of female labor force participation. Moreover, as women's educational achievement is consistently outperforming that of men,[22] there is also productivity to be gained from women's participation in a labor force that allows them to contribute on equal terms with men. Currently, women (especially mothers) are often forced to work in jobs that are below their ability or skill level because they cannot put in the hours required by these male-patterned jobs. For these reasons, Esping-Andersen notes that "women-friendly policy is, simultaneously, family- and society-friendly" (2002: 94).

There is a broad consensus in the welfare state literature on what women-friendly policy is. It includes affordable day care and early childhood education (including good treatment of care workers), paid maternity and parental leave (including male take-up incentives), and provision for work absence when children are ill (Esping-Andersen 2002: 94; see also Morgan 2006: 13, Sainsbury 1999: 246, Orloff 1993: 322, Nelson and Stephens 2008: 8). It also requires provisions guaranteeing the right to and availability of part-time work (Gornick and Meyers 2003: 62-3), and an abandonment or rethinking of employment protection and social security payroll taxes, which are negatively correlated with female labor market participation (Nelson and Stephens 2008: 8). The new gender contract should also include general protections for (male and female) workers (some argue for overtime protection and workweek limits) (Gornick and Meyers 2003: 13), and unemployment compensation (Nelson and Stephens 2008: 8). Welfare states must abandon the goal of securing a "family wage," instead accepting and embracing a

[22] "Since the 1990s, women have outnumbered men in both college enrollment and college completion rates, reversing a trend that lasted through the 1960s and '70s….By 2013, 37% of women ages 25 to 29 had at least a bachelor's degree, compared with 30% of men in the same age range. Women are also more likely to continue their education after college: 12% of women ages 25 to 34 in 2013 had a master's, doctorate or professional degree, compared with 8% of men in the same age group. In 2012, women earned 60% of all master's degrees (up from 46% in 1977) and 51% of all doctorates (up from 21% in 1977). In 2013 women earned 36% of MBAs" (Parker, Horowitz, and Rohal 2015, 7, 15).

new gender contract in which women (and therefore mothers) work. Facilitating this new arrangement, they argue, is of fundamental importance to the credibility of the welfare state formula.

Williams (2000) argues convincingly that one reason many attempts to achieve equality in labor force participation and economic parity between women and men have failed is that these policies systematically underestimate care—that is, they underestimate the extent to which parents value the quality of their children's upbringing.[23] Generally, parents will not opt for work schedules in which childcare arrangements mean that the parents will never see their children awake; instead, mothers (much more rarely, fathers) choose to leave their jobs or to transition into more precarious part-time or mommy-track work. [24] Williams calls this the "norm of parental care," or sometimes a "nondelegation doctrine."

> We are willing to give up a lot to achieve healthy, well-adjusted, secure, successful children; often we do. In the face of our dreams for our children, marginalization at work often seems a price worth paying, even if it may lead to disappointments or to economic vulnerability later in life. All this suggests that it is time to acknowledge the *norm of parental care.* Let me say loud and clear that this is not the same as saying that children need full-time mothercare….Note that the norm of parental care is not a simple carryover but a transmutation of domesticity's norm of mothercare into a norm applicable to all parents regardless of the shape of their genitals. (Williams 2000, 52, 199)

[23] To feminists who balk at this statement, Williams points out that many feminist mothers act on the norm of parental care in their own families. "I know radical lesbians who are dead set against the existence of marriage but who embrace as uncontroversial the view that children often need their parents in ways that can interfere with full-time market work. Feminists need to stop attacking ideals they act upon in their own lives" (2000, 200).

[24] In this chapter I am using the heteronormative language of "mother" and "father." Using the gender-neutral "partner" is not possible because it is confusing in the context of an argument that speaks to the need for fathers to change their gender roles. Using the more-inclusive language of "partner" would obscure my meaning. The argument also does not apply in the same way to same-sex breastfeeding couples, for whom gender roles are still relevant but do not operate in exactly the same way. So, while the gender roles of same-sex couples are important and relevant, they are outside of the scope of this chapter. The workplace protections that I advocate here should apply the same way to all breastfeeding parents, regardless of their sexuality or gender presentation. I explore the policy implications of same-sex co-breastfeeding families below.

Breastfeeding fits well into this concept of the norm of parental care. Many women, for a wide variety of reasons, value giving their young children nutrition through breast milk and comfort through nursing. This is not a task they are willing to delegate to formula-feeding. As with childcare, our policies must acknowledge this non-delegation doctrine that exists for many women. If social policies fail to take into account the norm of parental care, we can expect that one parent (usually the mother) will act against her economic interests to stay home with her children, perpetuating the gender inequality of the current system.

The universal-breadwinner strategy, then, in which women and men alike attempt to fulfill the ideal-worker role, does not work for mothers. Welfare states should abandon policies that are based on universal-breadwinner presumptions (Esping-Anderson 2002, Sainsbury 1999, Williams 2000, Gornick and Meyers 2003 and 2008; Fraser 1994).

> If the first liability of the [universal-breadwinner] model is its devaluation of family work, the second is its denial that structural changes are necessary in order for women to reach equality. Women's entrance into the workforce without changes to either the structure of market work or the gendered allocation of family work means that women with full-time jobs work much longer hours than women at home,…[because] men would not give up their traditional entitlement to women's household work (Williams 2000, 47, 46)

And because it does not consider the norm of parental care, the universal-breadwinner strategy has also, simply, failed at its own goal of drawing female workers into the formal labor market to the same extent as male workers. While female labor force participation of mothers rose steadily from the mid-1970s to the mid-1990s, it has been stagnant in recent years (U.S. Bureau of Labor Statistics 2009). The universal-breadwinner strategy is bad for women, families, and children.

Two welfare strategies remain: models based on a philosophy of caregiver-parity and equality-promoting models that are based on an equality-promoting ideal. Sainsbury (1999) describes the caregiver-parity model as one that "focuses on measures to support care rather than

to enable employment" (263). The caregiver-parity model is an improvement for women because it recognizes the value of the care work that they (mostly) provide. On the other hand, the caregiver-parity policies of care allowances or care credits in social-insurance schemes do not take sufficient care for women's long-term prospects: mothers are still in a disadvantaged position because of lower lifetime earning potential and difficulty reentering the labor force (Sainsbury 1999, 264, see also Fraser 1994). Because of this, caregiver-parity models fail at their goal of gender equality; indeed, "Neither universal breadwinner nor caregiver parity can actually make good on its promise of gender equity—even under very favorable conditions. Although both are good at preventing women's poverty and exploitation, both are only fair at redressing inequality of respect" (Fraser 1994, 610).

Equality-promoting welfare models[25] hold much more promise for achieving gender equality and provide better economic protection to mothers (Okin 1989; Fraser 1994; Sainsbury 1999; Williams 2000; Esping-Anderson 2002; Gornick and Meyers 2003 and 2008).[26] Instead of glossing over the needs of dependent family members like the universal-breadwinner model, the equality-promoting model acknowledges the norm of parental care and demands the dismantling of the ideal-worker norm. Instead of continuing the life-long marginalization and economic vulnerability of women like the caregiver-parity model, the equality-promoting model allows both men and women to maintain a (reasonable) attachment to paid work throughout the course of their lives, including through various stages of caregiving that are demanding of time.

[25] Some scholars (Sainsbury 1999, Gornick and Meyers 2003, 2008) refer to this model as "dual-earner—dual-carer," but I elect to use the "equality-promoting" language (Brighouse and Wright 2008, Ghaeus and Robeyns 2011) as it is more inclusive of non-traditional families.

[26] Equality-promoting models are the most defamilializing—that is, they are the most likely welfare model to enable individual adults to uphold a socially acceptable standard of living, independently of family relationships (Sainsbury 1996).

The equality-promoting model entails a radical change: the feminization of male behavior. As Nancy Fraser argues, “The key to achieving gender equity in a postindustral welfare state, then, is to make women's current life patterns the norm” (1994: 611). There is an upper limit, Esping-Andersen rightly observes, to “female life course ‘masculinization’”—to how much women can become like men (2002: 93). “The pursuit of gender equality,” he therefore concludes, “will necessitate a substantial alteration of the male incentive structure” (2002: 93). So long as women’s potential income lags behind men’s, it is rational for each household to “adopt unequal specialization strategies” in which men do the paid work and women do the unpaid domestic work. The only way to get out of this situation is to change the institutions such that each household can act in an economically rational way while also allowing women to work outside of the home.

The goal here, say Gornick and Meyers, is that men and women “halve it all”—splitting paid work and unpaid work equally (2003: 85). This means men will take on more unpaid work and less paid work, and women will take on more paid work and less unpaid work. It is perhaps indicative of how gender inegalitarian our current society is that this ideal is almost unimaginable, but Gornick and Meyers spell it out for those who lack egalitarian imagination: parents would both work considerably less during the first three years of a child’s life, and would work more thereafter as the child entered daycare; men and women would stagger their hours in order to share the paid and unpaid work (2003: 95-7). The key conclusion, they note, is that this is all possible without an overall reduction in parents’ paid work time; it is simply a more egalitarian distribution of the work (2003: 97-8). Thus it is not true that a more equitable distribution of paid and unpaid labor would decrease the revenue base of a welfare state. Social policy can encourage these changes in male and female behavior in the following ways:

guaranteeing full wage compensation with no upper ceiling during parental leaves, nontransferable father-only leave, provision for high-quality child care and early education, ensuring access to part-time work, regulation of working time, and changes in early childhood education and school scheduling (to match parents' working hours).

What these changes amount to is a large-scale dismantling of the ideal-worker norm. Under the male- or universal-breadwinner norm, mothers are unable to act as ideal workers; they cannot put in overtime, they cannot handle unpredictable schedules, they cannot go to the bar after work for informal meetings where decisions are often made. What is important to point out, though, is that ideal-worker norms disadvantage involved fathers as much as they disadvantage mothers. Dismantling the ideal-worker norm helps fathers and mothers alike.

An equality-promoting model is explicitly associated with a degendering of roles. When Gornick and Meyers argue for the dual-earner—dual-carer ideal, they are pointing out that there is a more equitable distribution of tasks and that fathers and mothers each need to change their behavior to reach this ideal.

> Parenting would be degendered; fathers and mothers would share responsibility for earning and caregiving symmetrically, with support from both employers and society more broadly. (Gornick and Meyers 2003, 12)

But, unless they are arguing for artificial reproduction (which they are not), sex-based differences will continue to affect parenting. Breastfeeding and other biologically determined activities like pregnancy and childbirth simply are sex-based, even in a degendered family. While Esping-Anderson points out that there is an upper limit to female life course "masculinization," we should not forget that there is also an upper limit to male life course "feminization." Thus any feasible incarnation of the equality-promoting model has to encompass the fact that women unavoidably take on more of some caring roles, much as women might like

to share the work of pregnancy or breastfeeding.[27] To want to pursue both a society in which women can breastfeed their babies and work and care are split equally between the sexes requires a more nuanced and complex approach in which men would actually have to take on *more* of the non-breastfeeding responsibilities in order to balance women's breastfeeding. The relevant question is, then, how can feminists argue for an equality-promoting model while simultaneously supporting special treatment of mothers?

The demand for an equal parental split of work and care and the demand for the feminization of male lives (really, for a convergence of male and female behavior) make sense in the context of concern for the viability of the welfare state model and concern for gender equality. It is true that men must take on more traditionally female tasks, like child care, and refuse traditionally male expectations, like working long overtime hours, if the goal of gender equality is to be met. But these demands have an unintended effect: while gender-neutral "family-friendly" policies are emphasized (such as parental leave), maternal-specific "woman-friendly" policies are not. "Special" treatment for women is seen as unwise for two reasons: it has the potential to disadvantage all women workers (because hiring a woman means taking on an increased level of liability, and because it can weaken women's overall labor force participation and economic stability) and it can operate as a deterrent from men taking on their full share of parental duties. So while it seems important to advocate for parental leave (and for father-only leave, insofar as fathers need take-up incentives to take their entitled leave), it seems dangerous to advocate for "maternity" leave—even though maternity leave is important both as a

[27] In a survey of mothers, Pam Carter found that "Women appeared to get more help with bottle-feeding than with other household duties, and from a wider range of people" (1995, 125). If this is true, it might explain why breastfeeding seems like one of the only tasks that women can actually take off their plates. For breastfeeding to be accommodated within the equality-promoting model, fathers (and others) need to be willing to take on non-feeding infant tasks.

time to recover from childbirth and also as a period in which to establish breastfeeding. Women-friendly policies that can be framed in gender-neutral language—access to part time work, equal pay, child care—are rhetorically easy to advocate for. But breastfeeding is a casualty of the gender-neutral paradigm because it cannot be framed in gender-neutral language.[28] Not all policies should, or can, be framed in gender-neutral language; sex-specific policies have a place, even if the ultimate goal is degendered parenting. Policy makers need to tackle, rather than shy away from, issues like these that spark special treatment/equality debates.[29]

For this reason, the literature on gender and the welfare state addresses issues related to motherhood and to work-family balance, including such issues as parental leave, paid sick time, access to part-time work, and availability of child-care, but it almost never addresses the special difficulties faced by breastfeeding workers. Breastfeeding is never mentioned by Esping-Andersen, Sainsbury, Williams, or Morgan in their discussions of the needs of working mothers. Because breastfeeding is a biologically linked caregiving activity that cannot be shared with men and because it can be a long-term relationship (childbirth lasts a day or two, pregnancy last nine months, breastfeeding is recommended for two years and can last even longer), it is imperative that discussions of women's ability to navigate work and family include discussions of the needs of breastfeeding workers. Theories of how to dismantle the ideal-worker norm will not be effective if they do not consider breastfeeding.

For example, as part of their dual-earner—dual-carer ideal, Gornick and Meyers discuss

[28] Compare with the Indiana Guidelines for child custody presented on page 114; these guidelines support breastfeeding mothers and babies in a gender-neutral manner that never mentions breastfeeding explicitly.

[29] I do not claim that advocates of the equality-promoting model *claim* to only support gender-neutral policies, but that the unintentional effect of their focus is to gloss over sex-specific needs. Thus, for example, Gornick and Meyers (2008) say that breastfeeding should be accommodated, but they fail to consider that this accommodation may have sex-specific implications.

ways to encourage a more egalitarian division of parental leave provision. They rightly point out that the fact that women take the vast majority of parental leave time may contribute to gender inequality. "If parental leave is taken up mostly or exclusively by women," say Gornick and Meyers, leave will "weaken women's labor force attachment and exacerbate gender inequalities at home and in the workplace" (Gornick and Meyers 2008, 133). Likewise, Sainsbury argues that the earner-carer strategy requires that "each parent would be entitled to equal periods of leave to care for a child" (1999, 265). Though it is imperative to consider the ways in which the structure of parental leave weakens women's labor force participation, must the ideal situation be one in which men and women split parental leave time equally? After all, if women are taking more leave in order to facilitate their breastfeeding relationship, this should not be seen as evidence of inequality. Similarly, the special considerations of breastfeeding and the fact that many women hope to breastfeed for at least one year call into question Gornick and Meyers's assertion that per-parent paid leave time must be capped at six months, especially absent other protections for breastfeeding mothers who are back to work outside of the home, in which case maternity leave acts as a practical safety net for breastfeeding (2008, 325). Though Gornick and Meyers note that employment arrangements should not limit a woman's ability to breastfeed, [30] they do not fully consider all of the ways in which that ability might be limited.

In the very few cases in which welfare state theorists do mention breastfeeding, it is generally approached in the manner of Gornick and Meyers—that breastfeeding must be allowed, but shouldn't work against goals of gender equality. Gheaus and Robeyns write in a footnote, "The choice to breastfeed introduces a bias in having the mother do the hands-on care

[30] "For the youngest children, for example, employment arrangements that limit mothers' ability to breastfeed, or that place children in substitute care for long hours during the first year of life, have been linked to poorer health and developmental outcomes" (Gornick and Meyers 2008, 319).

for the child in the early months, and hence requires a sacrifice in terms of advancing the good of gender fairness. We assume that breastfeeding brings sufficient benefit in terms of the baby's health to warrant this sacrifice" (2011, 190). Gheaus and Robeyns argue that six months of leave for the mother "makes it easier to breastfeed," but that if mothers require more time, they must rely on medical leave or policies protecting breastfeeding workers away from home (185).

But breastfeeding mothers themselves approach the problem differently. In 2008, a Norwegian government commission proposed changing the parental leave entitlement from 54 total weeks of which 6 must be used by the father or not at all, to one in which the 54 weeks were split equally—18 for the mother, 18 for the father, and 18 to share. The uproar over this proposed change was widespread. Many felt that the change would "take leave away from mothers," and claimed that mothers' ability to breastfeed would be harmed by the change (Ellingsaeter 2012, 701). In Norway, longer-term breastfeeding is the norm: in 2006, prevalence of breastfeeding was 99% at birth, 91% at two months, 85% at four months, 80% at six months, and 36% at twelve months (Helsedirektoratet 2008). What is important here is that families who are accustomed to a longer maternal leave benefit associate this leave with success in breastfeeding and oppose changes on the grounds that the leave is important for breastfeeding. Many Norwegians thus argued for a "conditional quota," as opposed to the proposed three-way split, arguing that an extension of the father-only leave quota is appropriate only if it is in addition to the current leave, rather than taken from it (Ellingsaeter 2012, 706). Thus Norwegians are not opposed to gender-promoting policies in principle, but are opposed to them in practice when they are perceived to harm sex-specific needs.

In the next section, I explore the problems that arise in the workplace for breastfeeding workers and how policies address mothers' difference in the workplace. I argue that theories of

the welfare state must accommodate the special considerations of breastfeeding mothers, even as they also consider how to do so in ways that will not entrench gender inequality.

Part 3: Difference at Work: Breastfeeding Workers

The birth of a baby to a woman in the paid workforce puts the mother in the position of having special needs compared with an ideal worker. These special needs have long been the subject of feminist debates about sameness/difference—do maternity leaves protect women, or marginalize them? If the leave is too long, is the woman harmed? How do we conceptualize policies protecting breastfeeding workers at work—policies to allow pumping breaks, for example—within an equality-promoting approach?

Breastfeeding workers, because they have distinct needs, are entitled to special treatment. But how can we ensure that this special treatment does not make breastfeeding workers more vulnerable? Williams argues that "treating women differently can leave them vulnerable as well" (2000, 207).

> To correctly apply the principle of treating men and women the same requires that formal equality be combined with an analysis of gender and power. Once this is accomplished, an analysis of masculine norms takes center stage. (Williams 2000, 207)

That is, the ideal-worker norms that define appropriate work behavior need to be dismantled. Breastfeeding workers receiving special treatment at work will be vulnerable so long as that special treatment is not combined with a dismantling of ideal-worker norms. The ideal-worker assumption that employees will come to work in the morning and be available, with no family or care commitments, until they leave nine plus hours later must be discarded. Once that norm is discarded, the "special treatment" of breastfeeding workers in the workplace will cease to render women vulnerable.

This is the conceptual key for achieving "special treatment" within an equality-promoting

regime. An equality-promoting regime is not a genderless, sexless regime. But, if ideal-worker norms are dismantled, and fathers' and mothers' caregiving roles are acknowledged, then all manifestations of caregiving commitments at work will be accepted. Fathers and mothers can leave work to pick up sick children, or to take their elderly parents to appointments. Indeed, changing institutions to remove assumptions that they are built for male lives is important; "When institutions are designed around men's bodies or life patterns, the first step in achieving gender equality is to dismantle masculine norms" (Williams 2000, 217). Mothers alone will retain the "special," sex-specific need for breaks in which to pump breast milk. But in a context where caregiving is expected and accommodated, this difference will no longer operate to marginalize mothers in the workplace.

One need not be a maternalist or in favor of a norm of mothercare to argue for special treatment of mothers. One can argue for a new norm of equal parenting while still acknowledging that mothers have special needs and that there are tasks (like breastfeeding) that can be completed only by mothers. Even in the period in which breastfeeding is time intensive (for at least the first six months of a child's life), fathers can remain equal carers, providing for the dozens of other caregiving needs of infants.

It is true that only breastfeeding mothers at work will experience the interruption to their work day from pumping breaks, and that fathers and formula-feeding mothers have no similarly situated task to perform. If we accept that the ideal-worker norm is untenable, this is just a fact of human life. Alternately, we can advocate for maternity leaves that will accommodate the bulk of the breastfeeding relationship. Feminists have good reason for advocating for longer maternity leaves on the basis of the needs of breastfeeding workers: maternity leaves offer mothers access to their children (as I discuss in chapter 3), which is correlated with higher levels of

breastfeeding success, and avoids the logistic problems associated with finding appropriate places at work for mothers to express and store milk.

Another option is to advocate for on-site childcare facilities, which allow breastfeeding workers to go to their child to feed, rather than take time for pumping breaks. But this only works at relatively large firms where workers remain in one location throughout the day. The important point here is that an equality-promoting model that acknowledges the existence of sex-specific needs, and which has eschewed the ideal-worker norm, will be able to accommodate longer maternity leaves, on-site childcare, and pumping breaks without harming breastfeeding mothers. Under the current scheme, longer maternity leaves are (arguably, see Keck and Saraceno 2013) associated with an overall reduction in mother's labor market participation and overall financial security, but that need not be true in a system that expects that all parents (and, indeed, all humans) have caregiving responsibilities. Under the current scheme, on-site childcare is unavailable to most workers because access to children is anathema to the ideal-worker norm. But it need not be under an equality-promoting regime. If the equality-promoting model succeeds, it will do so within a redefinition of gender roles that accommodates caregiving. The happy conclusion of this is an ideal that can accommodate sex-specific caregiving differences like breastfeeding without increasing women's vulnerability.

Part 4: Policies to Support Breastfeeding Workers

In this section I turn to potential social policies for protecting breastfeeding workers. State attempts to influence breastfeeding outcomes are not new; in the Weimar Republic, impoverished breastfeeding women were granted cash premiums (*Stillpramien)* for breastfeeding their infants; social workers visited mothers' homes unannounced to verify that they were lactating (Chamberlayne 1990, 17; Frohman 2006, 447). I argue that, today, state methods to

accommodate and promote breastfeeding workers can be divided into three main categories: protective negative provisions, enabling positive provisions, and attempts to change cultural norms.[31] Protective negative provisions are those that defend breastfeeding workers from discrimination or penalty for breastfeeding-related activities. Enabling positive provisions are those regulations that make it possible in practice for working mothers to decide to breastfeed without incurring undue costs. Attempts to change cultural norms are not generally aimed specifically at breastfeeding workers, but are projects at the state level that intend to render society more hospitable for those who decide to breastfeed—including working mothers.

Protective negative provisions establish the basic conditions that make it possible for breastfeeding mothers to choose to both breastfeed and work, though in the absence of more robust positive provisions, breastfeeding workers may still face enormous difficulties and incur personal and professional costs for doing so. Protective provisions come in a number of forms: laws establishing that breastfeeding mothers cannot be prosecuted for indecency or nudity for breastfeeding or pumping, laws exempting breastfeeding workers from strenuous work expectations, or laws about employer accommodations for breastfeeding workers, for example. Protective provision for employer accommodation would entail that breastfeeding workers are granted unpaid breaks and a (non-bathroom) space in which to pump (unpaid breaks are

[31] The different worlds of welfare capitalism are likely to take up these three categories of breastfeeding accommodation differently. Liberal regimes, characterized by minimal intervention in the market and a reliance on means-tested social assistance for the very poor, are more likely to adopt protective negative provisions than enabling positive provisions. Social democratic welfare states, granting benefits universally on the basis of citizenship, actively promoting equality of wealth and gender, are more likely to adopt enabling positive provisions. Conservative corporatist or Christian democratic welfare states provide benefits based on labor-market participation, attempting to maintain traditional status relations by providing different entitlements based on group affiliation; these regimes are more likely to offer women protective negative provisions and those enabling positive provisions that facilitate at-home breastfeeding. See table 1 in appendix A.

necessary for breastfeeding mothers, but this is only a negative, rather than an enabling provision). Basic guarantee of unpaid maternity leave is also a protective provision; a guarantee for at least some unpaid time away from work is a necessary condition for a working mother to breastfeed—this time is necessary for mothers to establish breastfeeding as they recover from the physical demands of pregnancy and childbirth.

Enabling positive provisions are those that make the choice to breastfeed a real *choice*—one that can reasonably be made—and that together with negative protections constitute an environment that is actively supportive of breastfeeding workers. Enabling provisions vary widely in scope; examples include tax breaks for breast pump purchase or rental, cash payments to nursing mothers, access to part-time work or reduced working hours, on-site childcare, or laws about employer accommodations. In Sweden, working parents with a child age seven or younger have the right to work a six-hour day (Morgan 2006, 113). Enabling provision for employer accommodation would guarantee paid breaks and a space in which to pump. Germany offers paid breaks that breastfeeding workers can use to pump or to nurse (World Alliance for Breastfeeding Action 2006).

State attempts to change cultural and societal norms and assumptions about breastfeeding can come in a variety of forms. These are campaigns to convince parents that breastfeeding is optimal and to debunk myths about breastfeeding, with the goal of increasing breastfeeding rates through changing culture. One high-profile attempt has been the International Code of Marketing of Breast-milk Substitutes (WHO 1981) that sets limits on the types of claims that can be made by formula manufacturers. Attempts to change cultural norms often come under the purview of public health departments, or public health campaigns. The United States Centers for Disease Control and Prevention, for example, publicize that they are “committed to increasing

breastfeeding rates throughout the United States and to promoting and supporting optimal breastfeeding practices toward the ultimate goal of improving the public's health."[32] Alternately, states might subsidize educational programs or hospital initiatives to promote breastfeeding. These programs are a leading way that states have attempted to address low breastfeeding rates, but they are often objectionable to feminists in that they do not offer any material support to women and do not consider the question of infant feeding from the perspective of the mother's needs; that is, they assume that breastfeeding is a matter of individual will rather than taking place within a complex set of barriers. Moreover, changing cultural norms from above is tricky business. In general, changes in infant feeding culture will change breastfeeding outcomes, but so will changes in policy, and changes in policy will affect culture, and changes in culture will affect policy. These variables are difficult to disentangle.

A word about attempts to change cultural norms: feminists are right to be wary of campaigns to encourage breastfeeding. Increased information about feeding is good for all parents. But it is easy for a campaign intended to spread information and acceptance to lead to an impermissible shaming or imposition on the autonomy of mothers who cannot or decide not to breastfeed. Evidence suggests that even low-income formula-feeding mothers are aware of the health benefits of breastfeeding (Guttman and Zimmerman 2000). The reason that they do not breastfeed is that cultural and institutional realities prevent them from doing so.

Public health campaigns should be targeted to give specific, non-shaming information or to increase visibility, which I discuss more in chapter 2. They should be crafted to avoid perpetuating stereotypes of mothers as sole caregivers, respecting the ideal of the equality-promoting model. Better yet, public health campaigns should focus on providing information to

[32] http://www.cdc.gov/breastfeeding/

pregnant women, and on dismantling the barriers they face (Guttman and Zimmerman 2000).

Enabling positive provisions are most consistent with the philosophy of the equality-promoting model. These provisions allow women to combine work and breastfeeding. In fact, under an equality-promoting welfare regime no longer guided by the ideal-worker norm, protective negative positions should have a limited role because parents' caregiving responsibilities, including mothers' breastfeeding, will be expected and accommodated without fanfare.

Properly-architected (paid, job-protected) parental leave policy is also enabling of breastfeeding. Enabling maternity leave provision would guarantee paid leave for at least long enough for the mother to establish breastfeeding before returning to work, and, better, for an entire year—long enough to finish the most demanding period of the breastfeeding relationship before returning to work. It is key that policies continue to support (contra Gornick and Meyers 2008, Gheaus and Robeyns 2011) mothers and children who continue to breastfeed past the first six months. While parental leave cannot extend forever, it should accommodate the demanding portion of the breastfeeding relationship, at which point robust protections for breastfeeding workers would allow the mother to continue to breastfeed.[33] In Sweden, for example, parents are entitled to sixteen months of paid parental leave: thirteen months of leave at a replacement rate of 80%, followed by three months at a flat rate. Two of these months must be used by the father (or not at all) (Morgan 2006, 113). This parental leave arrangement is accommodating of breastfeeding.

[33] My argument on page 105 against time horizons for breastfeeding accommodation policies applies here as well: I do not think it wise to dictate an end point for these accommodations. In the context of pumping breaks at work, most mothers are likely to stop pumping when their child is around 12 months, even if their child continues to breastfeed. Mothers generally do not enjoy pumping and will not do so unless they feel it is necessary for their child. Workplace protections should apply for as long as mothers continue to want to take advantage of them.

In recent years, with the rise of equality-promoting ideals, the trend is to stop talking of "maternity leave" altogether in favor of the gender-neutral "parental leave." Parental leave policies either apply to whichever parent is the primary caregiver (usually the woman), in which case "parental leave" is the functional equivalent of "maternity leave," or it can be split between the parents. I argue above that splitting parental leave between the parents can have detrimental consequences for breastfeeding workers if per-parent leave is capped at a low amount, because maternity leave acts as a practical safety net for breastfeeding mothers.

There is much debate over the appropriate breakdown of parental leave; parental leaves must take into account the competing demands of at least three goods: the good of parental care (under which breastfeeding falls), the good of gender fairness, and the good of individual choice (Gheaus and Robeyns 2011, 173). We have seen that Gornick and Meyers (2008) argue for equal, non-transferrable leaves of 6 months for each parent. Brighouse and Wright (2008) would make the right to parental leave conditional upon the other parent taking up their leave entitlement as well. Brighouse and Wright's scheme is not sufficiently protective of mothers: mothers' ability to take leave is contingent upon having a progressive husband in a harmonious marriage (Gheaus and Robeyns 2011, 177). This would be especially harmful to breastfeeding mothers, who need leave time to enable their breastfeeding. Gornick and Meyers (2008) and Gheaus and Robeyns (2011) both mention breastfeeding in passing, noting that leave should enable breastfeeding, but that breastfeeding does not justify unequal leaves—what is especially interesting is that both of these accounts acknowledge that parental leave is important for breastfeeding without fully considering what accommodating breastfeeding within leaves would necessitate.

The goal of gender equality in parenting suggests that the partners' parental leaves

should not be overlapping: an appropriate leave breakdown would, for example, “allow parents some common leave time, during the first 4 weeks after the baby is born, but also significant leave for fathers on their own, which is important if men are to develop the same levels of parental competence and skills as mothers, and if mothers are to learn how to share childrearing with fathers” (Gheaus and Robeyns 2011, 185). Moreover, there is evidence that fathers in practice use parental leave to advance their careers, which would be curtailed by caretaking if the mother was not also present (Rhoads and Rhoads 2004).

Welfare state theorists are rightly concerned with the effect of long parental leave on mothers’ long-term financial security. Gheaus and Robeyns note that increased use of leave by mothers “is likely to lead to statistical discrimination against women in hiring and promotion decisions; it has a depressing effect on the lifetime earnings of women; it confirms the dominant gender ideologies that women’s priorities should be with their families whereas men’s should be at work; and it amounts to mothers continuing to do more caring work within the household not just for a short period but for many years” (2011, 174). But new research establishes some interesting points. Keck and Saraceno (2013) find that “The availability of long and well-paid leave does not have a negative impact on the employment of mothers in the medium term; on the contrary, a long, well-paid leave is correlated with longer working hours of employed mothers later on” (315). Almqvist and Duvander, furthermore, find that “when fathers took long leave parents shared both household tasks and childcare more equally after the leave” (2014, 19). This research suggests that equality- and breastfeeding-promoting leave policies should encourage long, well-paid leaves for both mothers and fathers.

I also note that long leaves should not be pursued in a vacuum—they should be pursued along with other systematic policies to dismantle the ideal-worker norm. As I argue above, the

ideal-worker norm must be dismantled if sex-specific policies are not to harm women. Long, well-paid leaves allow parents to pursue motherhood and women to pursue breastfeeding while working. So while we should be vigilant about monitoring the economic effects of long leaves on breastfeeding mothers, it would be a mistake to avoid granting generous leaves to mothers on the basis of a possible negative effect—indeed, the *lack* of leave has a documented negative effect now.

Imagine that a mother takes longer leave than a father in an equality-promoting society without ideal-working norms, with a partner who actively shares caregiving responsibilities.[34] If men took on more care work and eschewed the old ideal-worker norms in the workplace, we can assume that women's leave will harm their future prospects less than it does under the current system, since they will not be measured against such a family-unfriendly standard. It is also likely that increasing the availability of part-time work will be key—if mothers and fathers can return to work in a part-time capacity (but at a high pay rate and without losing benefits), they can retain a "foot in the door" while still securing a good deal of time to be with their children. This arrangement accommodates breastfeeding (because mothers have increased access to their children) and protects women's long-term career prospects (because they do not become obsolete in their job, knowledge, or career—as often happens now when women leave the workforce). It may well be, though, that certain features of the caregiver-parity model—such as care allowances or care credits in social-insurance schemes—will be necessary to protect mothers who have taken unequal, sex-specific leave to accommodate breastfeeding. But, in an equality-promoting society, these caregiver-parity policies will be more equal in practice because we

[34] Alternately, both parents could be entitled to "long" leaves of a year or more, in which case gender parity of leave would be restored. It remains to be seen whether men would take up a "long" leave—though absent ideal-worker norms it is possible that they would, especially if leaves had high replacement rates without low income caps.

would expect more men to take advantage of them. If fathers are not taking advantage of these caregiving policies, we can assume that the system is not actually equal in practice.[35] Policy makers should watch these trends carefully as they progress, making policy changes as needed to protect breastfeeding workers.

It is worth noting that countries offering policies supporting breastfeeding workers are correlated with higher rates of breastfeeding (see table 1 on page 142 and figures 2 and 3 on pages 143 and 144 in appendix A). Of course, the causal relationship behind this correlation is difficult to parse out. We do know that in the United States, women report that they are not meeting their own self-determined breastfeeding goals (Perrine et al. 2012). Support for breastfeeding mothers helps them meet their breastfeeding intentions; having access to a lactation consultant after birth, for example, results in a significantly greater percentage of mothers meeting their goals (Quarles et al. 1994). Likewise, increased institutional support will help those women who intend to breastfeed be successful, thereby increasing overall rates of breastfeeding, especially breastfeeding duration for working mothers.

Part 5: Embracing Single-Parent and Same-Sex Breastfeeding Families

Welfare state theories, as Esping-Andersen notes, articulate a vision of the "good society" (2002, 2). So it is problematic to ignore (or to tack on in hindsight) non-traditional families in the formulation of welfare state models. When we speak of "dual-earner—dual-carer" models, what does this say about families headed by single parents—which, in 2011 constitute 25% of families in the United States? (Wang, Parker, and Taylor 2013). Moreover, when we craft parental leave provision with heterosexual couples in mind, do we overlook the needs of same-sex families?

[35] "An effective test for whether flexible policy marginalizes the workers who use it is to see whether men as well as mothers use it, for virtually no men will use policies that offer flexibility at the price of marginalization" (Williams 2000, 275).

Single breastfeeding mothers and breastfeeding queer families demand explicit consideration in the formulation of welfare state policies.

Single breastfeeding workers merit special policy consideration. Equality-promoting welfare models are often referred to as "dual-earner—dual-carer," revealing the overt assumption of dual-parent families. A single parent is the earner-carer by default. How should parental leave apply to single mothers? There is a worry that granting a "too long" leave to single mothers will reduce their economic security and their labor force attachment, and that a "too short" leave will deprive their children of parental care (Gornick and Meyers 2008, Gheaus and Robeyns 2011). Gornick and Meyers (2008) propose granting single parents 9 months of leave, more than the 6 months that each parent in a dual-parent family is entitled to, but not as much as the 12 months of total leave allotted to dual-parent families (347). Since single mothers and their children are already in a vulnerable position, it is imperative that social policy not disadvantage them further. Single parents should be entitled to the same total amount of leave as dual-parent families.

With regard to breastfeeding, single mothers are less likely to breastfeed, both in initiation and duration (Best Start 2014). Family leave policy must enable single mothers to breastfeed, should they decide to do so. Single parents merit more choice in their use of parental leave than do other parents—each single parent is in the best position to know how to balance her earning and caring roles. (Single breastfeeding mothers may want to, for example, take a few months of full-time leave followed by a long period of part-time leave to facilitate continued breastfeeding and career attachment.) Statistics on how this increased level of leave affects single mothers after implementation should be monitored closely and policies should be changed if needed; special attention should be paid to programs helping single mothers reintegrate back into the paid labor force.

Lesbian couples and queer couples with a transmale partner are also in a unique position with regard to breastfeeding, because two partners have the ability to breastfeed (Moon 2012, Zizzo 2009). Though many queer families do not attempt to share breastfeeding, some do; this is a trend that may increase over time. Queer families can co-breastfeed in a number of ways. Two female partners can each give birth to a child around the same time and breastfeed their gestational child as well as their non-gestational child. Alternately, the non-gestational parent can induce lactation using a protocol such as the Newman-Goldfarb Protocol (which involves birth control, Domperidone, breast pumping, and herbs) (Newman and Goldfarb 2000). Queer families are thus at the frontier of egalitarian parenting, because unlike in heterosexual families, breastfeeding is a task and relationship that can be shared. Moreover, queer parents' fundamental human capability of breastfeeding should be respected, even in cases in which the child is not their biological or gestational child. Jules Moon, in a survey of co-nursing queer families, found that co-nursing partners report an overall reduction in stress, increased ease in breastfeeding, benefit to the parental relationship and to the partner relationship, and increased parity through sharing childcare responsibilities and in the equal ability of both parents to comfort the baby (2012).

Co-nursing queer families require policy makers to think carefully about the architecture of benefits for new parents. Co-nursing parents may require overlapping leave if both parents are to be successful at breastfeeding. An arrangement that may work especially well for co-nursing parents is for both partners to receive a birth leave in which to establish breastfeeding, and then a remaining parental leave that can be split at the discretion of the parents: either a half-time arrangement, so that each parent can continue to provide care and milk to the child while working reduced hours, or taken in turn. In the case of co-nursing parents, it seems unlikely that

overlapping leave could contribute to gender inequality. This is a case in which the status of breastfeeding should trigger a different leave entitlement, since the split of parental leave for single-breastfeeding couples is subject to different considerations (see discussion on page 48).

Part 6: Policy Implications

The evidence presented above shows that the welfare state must begin taking breastfeeding seriously, and in particular the needs of breastfeeding workers. When considering how the state can best support breastfeeding workers, it is important to ensure that policies do not improperly intrude on women's autonomy. Williams suggests that equal-parenting advocates should adopt three features of maternalist (caregiver-parity) theory to protect women's autonomy:

> First and foremost, they should respect family work, and focus as much on entitlements for caregivers as on entitlements for workers. Second, they need to avoid eliminating entitlements for caregivers in the name of equal-parenting goals. …Finally, equal-parenting policies need to be drafted very carefully, to help insure that they are not interpreted in ways that turn them into weapons against women. (2000, 231)

Policies to support breastfeeding must be considered carefully against this rubric, especially against the point that policies cannot be used as weapons against women. As I argue in the introduction, it is imperative that policies to support breastfeeding workers not be used to force other women to breastfeed. It is likewise important that women not feel obligated to take advantage of long maternity leave if they are eager to get back to work, which I discuss more in the context of maternal separation in chapter 3. Policies to support breastfeeding workers should be monitored on an ongoing basis to ensure that they are not having inappropriate and unintended outcomes that harm other women or fathers. If they do, this new evidence should contribute to a discussion and change of the policy. It would be appropriate to have a section or committee within the Department of Labor and Department of Health and Human Services

dedicated to breastfeeding oversight. An on-going examination of the effect of policies is necessary.

As discussed above, the implementation of long parental leaves must be monitored closely to determine whether it has a negative effect on women's financial security. It should be explicitly noted that we do not yet have good evidence about the outcome of long leaves in a gender-egalitarian society because there are no extant welfare state systems that are fully egalitarian, though some try. Gendered differences in leave, overall paid work and house work, and pay persist to varying extents even in countries like Sweden with gender-egalitarian policies (Goldsheider et al. 2013, Johansson et al. 2005). Longer leaves will certainly not harm women's long-term prospects more than dropping out of the workforce entirely, which women often do now because of their inability to reconcile work and care (or work and breastfeeding). But long leaves may still be problematic and must be monitored.

I have argued in this chapter that sex-specific policies have an important place in an equality-promoting welfare regime. I specifically target gender-neutral policies insofar as they detract attention and legitimacy from sex-specific policies, which have an important place for mothers, especially breastfeeding mothers. I want to emphasize, though, that the parental leave and father-only leave are also essential parts of the equality-promoting model. Men need to change their life patterns toward what has been a female norm. What I am advocating is that this discussion cannot lose sight of the sex-specific tasks of motherhood. We should take caution in summarily lamenting the fact that women take the majority of parental leave benefits; the fact that women often take more than 50% of parental leave time is not necessarily evidence of gender inequality women are taking the leave because they want to facilitate breastfeeding—an activity that fathers cannot do.

It is possible that, as changes in welfare state policies and cultural norms evolve into a new, gender-egalitarian "normal," the need for sex-specific policies would wane somewhat. Of course, women will always be the ones whose bodies bear the burden of reproduction. But one can imagine (in the distant future) a society that has fully dismantled ideal-worker norms, a society that grants fathers equal and generous leaves to match the leaves of mothers. One can imagine workplace protections that provide broad discretion to workers to accommodate their caring needs during the day without punishment—a work environment in which specific "pumping breaks" might become obsolete as workers take the time they need for caregiving of all types. Our society now requires concrete and robust protections for sex-specific needs, even if our ultimate vision is a more optimistic, egalitarian, and inclusive one.

Because the goal is to achieve both gender equality *and* a society in which women can be successful at breastfeeding, I argue that welfare states should pursue the following: paid birth leave for both parents in the period immediately following childbirth; paid maternity leave that is long enough to allow women to breastfeed their child for one year or longer before returning to work; father-only paternity leave that can be taken after the year of maternity leave; reduced working hours for parents; robust protections for single mothers and co-breastfeeding queer couples; and statutory rights for breastfeeding workers, including paid breaks in which to pump or nurse after they return to work following leave. The burden of these accommodations should not be placed on the breastfeeding worker, and breastfeeding workers should not be made to feel that their accommodation is a hardship to their employer.

This chapter insists that breastfeeding become a focus in welfare state literature. Research discussing the needs of working women without talking about social policy on breastfeeding is radically incomplete. Further research in this area could include a comparative study of the

prevalence of breastfeeding and female labor force participation by region in each country that compares rates of breastfeeding (controlled for different levels of working mothers), probing the question of whether social policies make a difference in women's success at breastfeeding. Also of interest would be an investigation into the ways in which cultural norms about breastfeeding translate into government demands in the different regime types and the ways in which government provisions for breastfeeding mothers are able to change cultural norms. To be able to evaluate whether breastfeeding and women's autonomy are being met, data should be collected more systematically on whether women are meeting their own breastfeeding goals, rather than only on overall rates. Perhaps the research agenda most strongly suggested by this chapter is a large-scale quantitative analysis of breastfeeding social policy and rates in a large sample of countries. Regardless, provision for breastfeeding workers should occupy a central place in literature on gender and the welfare state.

CHAPTER 2. BREASTFEEDING IN PUBLIC: DISGUST AND DISCOMFORT IN THE BODILESS PUBLIC SPHERE

"A simple burp rag over the child and the problem goes away," muses a commenter.[36] But the "problem" of public breastfeeding cannot be solved with a burp rag. Bystanders in the public sphere might think that breastfeeding mothers can abide by public norms, but most do not grasp the enormity of what it means to navigate public space as a breastfeeding mother. While grocery shopping, a mom's fussing baby needs to eat; she realizes that there is not a single chair to sit in. Stopping for a bite to eat, she nurses her screaming baby, only to be asked to leave or to nurse in the restroom. She heads to the mall, stopping to breastfeed her hungry baby on a bench, only to receive contemptuous looks from each passerby. She tries to use a breastfeeding cover, but the baby throws it off. She meets some acquaintances, but when she starts breastfeeding they begin stammering, exhibiting discomfort—they do not know how to act, where to look, what to do.

In the United States, the legal right of a mother to breastfeed in public is clear.[37] And yet, public norms—standards of public behavior shared by members of society—prevent breastfeeding mothers from navigating public space in an equal and autonomous manner. Public

[36]http://www.oregonlive.com/clackamascounty/index.ssf/2014/08/readers_react_to_breastfeeding.html (February 13, 2015).

[37] This chapter focuses on public breastfeeding in the United States. Similar cultural dynamics exist in other areas of the world, but the breastfeeding culture differs dramatically from place to place, even among developed countries. In Norway, for example, breastfeeding is so common that onlookers are more likely to censure a mother for bottle-feeding, raising a host of alternate concerns. Treating these differences is outside of the scope of this chapter.

spaces like parks, malls, restaurants, buildings, and offices present challenges to breastfeeding mothers. Breastfeeding makes others uncomfortable, evokes disgust, and triggers paternalistic moralizing. It "forces [bystanders] to look and notice, or to suffer self-consciousness about not looking or not not looking" (Miller 1997, 82). The case of public breastfeeding reveals the extent to which norm-defying actors are subject to demands to experience public life in a circumscribed way—they can only experience public life from a disadvantaged position, as an actor for whom public life was not designed. When breastfeeding mothers are expected to cover themselves under obtrusive nursing covers, are they still "in public"? Does that count as "equal access" to public space or to public life? It is unimaginable that members of other groups marked by difference—queer people, people of color, disabled people—would be explicitly asked to erect a physical cover in a public place under which to enact their difference, for the sake of the comfort of bystanders. The demands on breastfeeding women to tone down their difference, to prioritize the comfort of others, to discount their own needs, and to leave public areas are problematic in unique ways. And while breastfeeding mothers generally possess an official legal right of access to public places, the lived experience of breastfeeding mothers in public is marked by inequality and lack of autonomy.

The aim of this chapter is to consider what characterizes an equal and autonomous public sphere in a liberal society. If the public sphere—the spaces, activities, and deliberations that are open and available to all—were to be structured to grant equality and autonomy to breastfeeding mothers, what would have to change? I explicate the case of breastfeeding in public because a breastfeeding mother represents one of the most difficult cases for the public sphere; understanding the experience of breastfeeding mothers therefore provides a nuanced knowledge of the impediments to equality and autonomy in public. Breastfeeding bodies challenge the idea

that social equality can be found through equalizing access to the public sphere; the "access to" framework is not enough. An "access to" framework leaves open the possibility of allowing breastfeeding mothers to be in public, but not in an equal and autonomous manner—allowing them to be in public, but only insofar as they abide by male norms. But if an "access to" framework is inadequate, what should the liberal goal be?

I argue, following Nussbaum (2004b), that social equality and autonomy for all persons require that public expressions and actions cannot be legally prohibited on the basis of their causing discomfort or disgust in others. But in addition to this background legal requirement, I argue that equality and autonomy of public and private spheres require that certain conditions are met: first, every person must be able to occupy public space and the public sphere while embracing all significant aspects of their personhood; second, the comfort of others cannot weigh more than an individual's own needs in public; finally, all people must be able to opt for privacy in a way that does not entail invisibility or coerced exclusion. If these conditions are not met, public and private spheres oppress women.

To support these claims, I first examine the position of norm-defying actors in the public sphere, drawing on the queer theory of Michael Warner. I focus on the issue of actors, like breastfeeding mothers, whose very presence may evoke discomfort or disgust in others. I consider the theories of philosophers, including John Stuart Mill, William Miller, and Martha Nussbaum, who have interrogated the puzzle of granting equality to actors who evoke disgust in others. I then turn to an exposition of the issue of breastfeeding in public, drawing attention to the ways in which breastfeeding mothers in the United States today lack autonomy and equality in their lived experience of public space. I describe three main ways in which breastfeeding mothers respond to the antipathy of the public sphere: exclusion, accommodation, and

affirmation. In the final section, I outline an ideal of public and private spheres defined by equality and autonomy, offering a tentative answer to Michael Warner's question: "What kind of world would make the values of both publicness and privacy equally accessible to all?" (2002, 21).

My orientation here is a liberal one, but a liberal one that is critical of many previous liberal attempts to grant equality and autonomy to groups marked by difference. The main contribution of this chapter is to join together feminist literature on public and private spheres with the literature on the political theory of disgust, and to put both of these literatures in conversation with cultural theory on breastfeeding in public, which hasn't been given enough systematic attention by political theorists.

Part 1: Disgust and Discomfort in the Public Sphere

The public sphere generally refers to "that which pertains to the people as a whole, the community, the common good, things open to sight, and those things that are accessible and shared by all" (Landes 1998, 1–2). The public sphere is traditionally conceived as being marked by certain (male) norms and activities: rational, individualistic, and civic approaches to work, the market, the government. The types of activities that define the norms of the private, on the other hand, are those that are traditionally female: emotional, relational, and familial experiences related to caregiving, nurturing, and bodies.[38] "Public," for many feminists, signifies a sphere from which women have been formally or informally excluded. As Adrienne Rich (1986) notes, "the systems men have created are homogenous systems, which exclude and degrade women or

[38]"I propose a structural model that relates recurrent aspects of psychology and cultural and social organization to an opposition between the 'domestic' orientation of women and the extra-domestic or 'public' ties that, in most societies, are primarily available to men" (Rosaldo 1974, 17-8). See also Elshtain 1981, Pateman 1988.

deny our existence; and the most frequent rationalization for our exclusion from those systems is that we are or ought to be mothers" (210). That is, women, due in part to their actual or potential maternity, are interpreted as closer to nature and to the messiness of bodies, and as such are seen as fitting poorly into the rationalistic, bodiless public sphere.[39] The liberal feminist project of the past century has been a slow progression toward erasing the exclusion of women from the public sphere; if Rich's argument doesn't resonate today, it is because of the partial success of the liberal feminist project in securing access for those women who conform to norms.

But though participation in the public sphere is no longer tied to being a man, functionally the public sphere is still male. The legal project of guaranteeing access to traditionally male spheres has been undertaken while leaving in place the sexual of division of labor and women's subordination. Women have access to traditionally male spheres, but that access is often contingent upon acting male. As Wendy Brown (2005) points out, public norms demand that women can be "women in private and humans in public" (35, 28). Women can enter public spaces. But if they act too emotional, or not emotional enough, or if they cannot follow norms because of family commitments, they are sanctioned. Public norms demand that women disembody, filter, and repress what is related to their female body. The liberal project is incomplete—women cannot be considered equal public actors as long as they are subject to these demands.

The problematic imperative of the public sphere, policed through public norms, is that anyone is welcome—so long as they act like the ideal public actor: a heterosexual, white, able-

[39] It is true that the public is also characterized by male norms of embodiment—the idea of power as manifested through business suits and firm handshakes, for example. But men are in a privileged position to abstract away from their bodies and embodiment, while women, especially pregnant and breastfeeding women, are not.

bodied man.[40] This imperative is especially pernicious for those people who are not in a position to distance themselves from their bodies, leading Adrienne Rich to muse, "The body has been made so problematic for women that it has often seemed easier to shrug it off and travel as a disembodied spirit" (1986, 40). Breastfeeding mothers, pregnant women, disabled people, people of color, and queer people are all conspicuous in the public sphere because of their bodies and their bodily performance. Breastfeeding mothers are necessarily embodied: because newborns nurse at least every two to three hours, breastfeeding mothers cannot abstract away from their bodies to a public demeanor in which "mind alone matters" (Brown 2005, 27). They are tied to their bodies, to their motherhood, and to their children in an especially intense way. Because of this, breastfeeding mothers cannot practice their breastfeeding while abiding by the norms of the public; even if they wanted to, they cannot act like the ideal public actor in order to appease public norms. It is quite simply impossible to act bodiless or to act male or bodiless while breastfeeding.

These "publics"—"the public sphere," "public breastfeeding," "public norms," etc.—do not refer to exactly the same concepts. I use the phrase "public sphere" to indicate norm-governed spaces, activities, and deliberations that are open and available to all. The public sphere thus comprises a family of "publics": public space, public norms, public deliberation, being "out in public," the workplace.[41] The "public" of public breastfeeding, on the other hand, generally refers to breastfeeding that occurs in the presence of other people, usually but not always outside of the home. Public breastfeeding can take place in spaces that are usually designated as private:

[40] This list can be expanded *ad absurdum.* Goffman in *Stigma* (1963) defined the normative actor as "a young, married, white, urban, northern, heterosexual Protestant father of college education, fully employed, of good complexion, weight and height, and a recent record in sports" (128).

[41] For good discussions of public space, see Bickford 2000; Kohn 2004.

homes of friends or even one's own home, depending on who is present. Feminist thinkers have urged us to remember this complex nature of public and private; Susan Gal, for example, argues that the public/private dichotomy is a fractal relationship. Public and private "can be projected onto different social objects—activities, identities, institutions, spaces, and interactions—that can be further categorized into public and private parts" (2005, 265). This sense of the concept of "public" is distinct from the public sphere of, say, Habermas or from narrowly political conceptions of what defines "public." The "public" of public breastfeeding, in fact, often refers to spaces like the mall, the park, or restaurants—not places traditionally thought of as sites of public political importance. But, as feminists have maintained, women cannot be conceived of as equal peers in political and other important contexts if they are not treated as equals in the mall, the park, or restaurants—they cannot be equal participants in public deliberation and government if they cannot take up space in public without difficulty, if their concerns are chastised as being "inappropriate" for public forums. To create a context in which women (lactating or not) are equal participants in all sorts of publics, female and maternal embodiments must be normalized. Absent this, even non-lactating women are disadvantaged on the basis of their potential maternity or their potential lactation.

We have seen that breastfeeding mothers do not conform to public norms; a result of this is that a sizable proportion of people are unsupportive of and uncomfortable with public breastfeeding. In 2011, a population-based public opinion telephone survey asked New York City residents whether they agreed with the statement "Mothers who breastfeed should do so in private places only"—more than half, 50.4%, agreed (Mulready-Ward and Hackett 2014, 196–7). An unscientific survey in 2011 revealed that 44% of women report discomfort when they see a woman breastfeed in public, with 10% choosing the response "Ewwwww, in private please!"

(TheBump.com and Breastfeeding.com 2011).

Public discomfort with breastfeeding creates a context in which women are regularly, if not frequently, asked to leave public places or to cover themselves when breastfeeding their children. Breastfeeding mothers are also frequently ignored or fled from. And because mothers hear stories about women being antagonized for breastfeeding in public, they anticipate hostility and change the way they navigate public space. “There is a perception of a hostile public environment,” notes Cindy Stearns, so “women proceed with their breastfeeding as if it were deviant behavior occurring within a potentially hostile environment” (1999, 312). Background conditions, too, affect the way breastfeeding mothers navigate public life, as well—breastfeeding mothers have heard judgments cast upon mothers whom breastfeed too openly, too frequently, for too long. They well aware that their feeding decisions and the manner in which they undertake them will be subject to public scrutiny. Breastfeeding mothers are subject to social sanctions of varying severity when they engage in public breastfeeding, and these social sanctions affect their standing in public space.

Breastfeeding mothers today generally possess official access to the public sphere through legal protection; for example, laws in forty-five states allow breastfeeding mothers to nurse their babies in any public or private location, and laws in twenty-eight states specifically exempt breastfeeding mothers from public indecency laws (National Conference of State Legislatures 2013). North Carolina N.C. Gen. Stat. §14-190.9 (1993) provides that “notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breast feeding” (National Conference of State Legislatures 2013). But breastfeeding mothers are still subject to censure in public. I turn

next to an examination of why breastfeeding evokes such intense reactions from onlookers in public: namely, because breastfeeding exposes women to the indignity of being manifestly sexual beings, and because breastfeeding evokes awkward discomfort and disgust in others.

Groups whose difference is rooted in sexuality are often subject to public shame. Michael Warner, analyzing the experience of queer people and queer identity groups, claims that public shame is imposed on anyone whose sexuality is predominant, noting how hard it is to "assert any dignity when you stand exposed as a sexual being" (1999, 21). Thus, while the public sphere discounts and disadvantages all actors who do not conform to the norm of the ideal public actor, the worst treatment is reserved for those actors whose difference is rooted in bodies and sexuality. As Pam Carter (1995) notes, "What appears to be disturbing is the very particular form of 'sexuality' which is observed when breastfeeding takes place in public places. Current dominant discourses…*expect* women's bodies to be sexualized—but in ways which signal heterosexual availability or involvement" (119). Breastfeeding mothers are therefore pushed down what Warner calls the social "hierarchy of shame" by the disapproval, indignation, and moral righteousness of others. And the politics of shame is not always overt, but also involves "silent inequalities, unintended effects of isolation, and the lack of public access" (1999, 7). This insidious unequal treatment constitutes a fundamentally unequal experience of public life. Warner argues that in a context of "sexual domination, publicness will feel like exposure, and privacy will feel like the closet" (2002, 52). That is, norms of sexuality and the politics of shame deprive groups that are defined by sexuality, including breastfeeding mothers, of the experience of free and equal publicness and privacy, distorting their experience of public and private space.

But even bystanders who are not consciously inflicting shame on breastfeeding mothers can contribute to their unequal position; in fact, the awkwardness that most people feel in public

upon witnessing a breastfeeding mother can affect the mother's experience of public space. She is subject to the gaze, she feels visible (or invisible) and vulnerable. Bystanders do not know what public norms demand, in large part because breastfeeding has been increasing over the past decades and, therefore, most people were not socialized to witness public breastfeeding. The situation is marked by social awkwardness. This awkwardness is understandable, but from the perspective of mothers this means that, when they are lucky enough not to experience outright hostility, a barrage of awkward encounters defines their experience of public space.

Part of the social awkwardness surrounding public breastfeeding stems from the perception that breastfeeding is a voluntary activity—something the mother could decide not to do. Onlookers have a low level of tolerance for breastfeeding because it seems clear to them that the mother could use formula or offer a bottle instead.[42] This view of breastfeeding as voluntary extends to judicial language. In cases that find breastfeeding is not a protected activity, the courts have consistently emphasized the optional nature of breastfeeding. The woman's "decision to breastfeed" is cited in *Puente v. Ridge*[43] and *Falk v. City of Glendale,*[44] two cases which failed to find breastfeeding a protected activity. Judicial language may be changing, though, with *EEOC v. Houston Funding II, Ltd.* 2013.[45] The Pregnancy Discrimination Act prohibits discrimination based on "pregnancy, childbirth, or related medical conditions"; a federal district court judge in *EEOC v. Houston Funding, Inc.* ruled that lactation is not a "condition related to pregnancy and

[42] In reality, this is not simple. A breastfeeding mother has to pump in advance to get enough milk to give a bottle later. If her baby is not skipping a feeding, it could take her multiple pumping sessions to accumulate enough milk. Moreover, many breastfed babies will not accept bottles, and transporting and heating milk safely is difficult.

[43] Puente v. Ridge, WL 1311504 (5th Cir. 2009).

[44] Falk v. City of Glendale, WL 2390556 (D. Colo. 2012).

[45] EEOC v. Houston Funding II, Ltd., 717 F. 3d 425 (5th Cir. 2013).

childbirth." The Court of Appeals for the Fifth Circuit reversed this ruling in 2013; the reversal hinges on the fact that lactation is "directly caused by hormonal changes associated with pregnancy"—that is, the reversal situates breastfeeding as an immutable trait related to pregnancy (therefore protected) rather than as a "decision" (which would not be protected). This reversal strengthens the legal protection of breastfeeding; when courts emphasize the voluntary nature of breastfeeding, they reflect a cultural understanding that public breastfeeding is a lifestyle choice that does not require legal protection. The discomfort caused by public breastfeeding, in the voluntary view, is unnecessary, and therefore not tolerated. Most onlookers persist in the voluntary view.

Relatedly, a disadvantaged place in the public sphere is reserved for those who evoke not just discomfort, but disgust, whether or not the disgust stems from a voluntary act. Some (though clearly not all) people respond to the sight of a mother breastfeeding with disgust, as evidenced by the 10% of women who responded to the question about breastfeeding in public with the choice "Ewwwww, in private please!" As William Miller (1997) describes in *The Anatomy of Disgust*, the disgusting is a moral and social sentiment that operates to hierarchize; disgust "ranks people and things in a kind of cosmic ordering" (2). Fewer people respond to the sight of breastfeeding with disgust than with discomfort (it is not as if people vomit at the sight. But an exploration of the disgust response, and of the political theory of disgust, is helpful here in elucidating the culture of both discomfort and disgust. So why would the sight of breastfeeding evoke disgust in others?

Miller presents four main points about the content of the disgusting. First, at the most basic level, the disgusting is likely to be the human, the body. Skin can "disgust as well as titillate," especially if the bearer of the skin is female and immodest (53). "There is nothing,"

says Miller, “quite like skin gone bad; it is in fact the marrings of skin which make up much of the substance of the ugly and monstrous” (52). Second, Miller notes that the disgusting is often related to orifices, breaks in the seal of the skin, and those things that confuse “the boundaries of the self” (50). A third main category of disgust is evoked by fertility: “What disgusts, startlingly, is the capacity for life…The generator of disgust is generation itself, surfeit, excess of ripeness” (40, 42). Finally, disgust is evoked by things that defy expectations in the social order: “Disgust,” Miller says, “tends to focus its moral work on moral issues that involve the body…. those bodily failings which indicate insufficient attention to the duty to make the social order as uneventful as it can be” (205). On this basis, “any serious breach of norms of modesty, dignity-maintenance, and self-presentability can be disgusting to behold” (80). These four main categories define the characteristics of the disgusting; when confronted with one of these disgusting objects, the universal response is a desire “to have the offending item removed” (25).

With Miller’s explication of the disgusting in place, it becomes easy to understand why breastfeeding has the potential to disgust. Breastfeeding mothers are showing skin in a culturally unacceptable way; they are challenging boundaries of the self and reminding us of orifices and of the exchange of bodily fluid; they are evoking images of ripeness, fertility, and excess; and they are defying expectations and disrupting the social order. They are challenging norms of sexuality and evoking deep, if misguided, fears about the sexualization of children. Though Miller mentions breasts surprisingly infrequently, he makes one literary reference to breasts that is notable in its ability to highlight the distinctiveness of the disgust of breastfeeding: in *Gulliver’s Travels*, Gulliver sees a wet nurse feeding an infant in Brobdingnag. “I must confess no object ever disgusted me so much as the sight of her monstrous breast, which I cannot tell what to compare with so as to give the curious reader an idea of its bulk, shape, and colour” (Swift cited

in Miller 1997, 56).

The lactating breast, then, can be perceived as monstrous. It is sometimes even treated as dangerous or contaminating. Recall this instance of the pop culture trope: in *Look Who's Talking* John Travolta's character accidentally consumes breast milk. When informed, he spits it out dramatically. In scenes like this, breast milk is treated in a manner that would generally be reserved for poison or urine. Indeed, public breastfeeding is often likened to public sex, public masturbation, or public elimination. Ken Schram, a news reporter for Komo News 4, expounds: "It's natural. Well, so is urinating, but most folks don't up and pee in a glass jar in the middle of the mall."[46] Since, most basically, public elimination constitutes a public health hazard and public breastfeeding does not, the likening of public breastfeeding with public elimination assigns a malignancy to breast milk that has no basis in fact.

Of course, breastfeeding imagery is also evocative of the heavenly, the pure, the angelic. But if American culture simply viewed public breastfeeding as a present-day incarnation of da Vinci's *Maddona Litta*, the disdainful public treatment of breastfeeding mothers today would be a puzzle indeed. It is also clearly true that not all breasts are monstrous, and that some breasts are more monstrous than others. Non-lactating breasts that are displayed in a heterosexually available way are prized, not disdained. Even among lactating breasts there is a hierarchy of shame. Women with larger breasts and those nursing older children bear a larger burden of shame, as do those whose lactation intersects with other forms of difference, such as race, disability, homosexuality, or nonconforming gender presentation. Women who are conventionally attractive are likely to be perceived as being hypersexual while breastfeeding, or as flaunting their breastfeeding. So while lactating breasts generally fit into Miller's definition of

[46] Schram, Ken. 2005. "I'm All For This 'Cover Up'," Komonews.com. June 7. http://www.komonews.com/news/archive/4154451.html (August 22, 2014).

"skin gone bad," some lactating breasts go worse than others. The breasts of the Madonna feeding infant Jesus do not qualify in our cultural consciousness as "bad," though most terrestrial lactating breasts in public are deviant to some degree. Whether an enactment of public breastfeeding evokes discomfort or disgust in onlookers, breastfeeding mothers are in a marginal position in the public sphere on the basis of their deviance.

Part 2: Moral Equality and Disgust

A problem, then: how can the liberal ideal of moral equality coexist with a public sphere that interprets certain groups of people, like breastfeeding mothers, as discomforting, disgusting, or as out of place? Liberalism is tempted to declare victory once public rights are secured, absent considerations of the lived experience of oppressed groups navigating cultural norms. But cultural norms, which are intertwined with the politics of shame and the politics of disgust, discipline norm-defying actors, threatening their equality, autonomy, and ability to lead authentic lives. In this section, I focus on thinkers who discuss "disgust," rather than "discomfort"—both of which are at play in the case of public breastfeeding. This discussion of the concept of disgust, however, is relevant even to cases of mere discomfort.

A conservative approach to this puzzle is to reject the idea that moral equality must be sought for groups who evoke disgust in others; conservative Leon Kass argues for the "wisdom of repugnance," claiming that disgust is a sentiment that should be respected. "Revulsion is not an argument; and some of yesterday's repugnances are today calmly accepted—though, one must add, not always for the better. In crucial cases, however, repugnance is the emotional expression of deep wisdom, beyond reason's power fully to articulate it" (Kass 1997, 20). In this formulation, it is easy to see how a bystander's disgust at the sight of a woman breastfeeding can be taken as evidence of the act's impropriety, and indeed even as grounds for her removal. But

Kass is right to point out that revulsion is not an argument. Indeed, though there is some extent to which disgust operates at a universal human level (there seems to be a universal disgust with feces and incest, notwithstanding the fetishization of "disgusting" objects), the specific content of the disgusting is subject to cultural context (Miller 1997, 15).[47] Kass's admission that "some of yesterday's repugnances are today calmly accepted" surely questions the primordial wisdom of the sentiment; at the very least, one wonders how to determine if an instance of revulsion is a "crucial case."

In contrast with Kass's un-nuanced argument, liberals attempt to wrestle with the problem of discomforting or disgusting groups, but often encounter trouble of their own. Indeed, the problem of disgust is implicit throughout much of the liberal canon. John Stuart Mill's *On Liberty* [1859] 1998 is devoted to discovering when society is justified in restricting the liberty of others, whether by law or by norms. In many ways, *On Liberty* is an eloquent defense of the importance of difference, and therefore has direct implications for the question of dealing with difference based in discomfort or disgust; to wit, "the mere example of non-conformity, the mere refusal to bend the knee to custom, is itself a service" (74). To protect difference (or "eccentricity"), Mill proposes the harm principle: that the "only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others….In things which do not primarily concern others, individuality should assert itself" (14, 63). That is, when an action does not harm others, it is permissible. Mill's is, moreover, a fairly circumscribed notion of "harm": the "mere displeasure" of others does not itself constitute a harm (70). There are some, says Mill, who "consider as an injury to themselves

[47] Though there does appear to be disgust with feces cross-culturally, even this disgust is taught. Young children do not exhibit disgust at feces; rather, this disgust is a learned response that appears around three to four years of age. See Miller 1997, 12; Nussbaum 2004b, 94–5.

any conduct which they have a distaste for, and resent it as an outrage to their feelings….But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it" (93). These people, offended in their distaste, impute "moral delinquency" to what is uncustomary; they "teach that things are right because they are right; because we feel them to be so" (76, 93). Mill demands that liberals guard against this situation. Distaste, says Mill, is not a reason for prohibition.

Mill, though, admits of certain restrictions on liberty that diminish his claims about the importance of difference. Mill says, for example, that "the fool," as long as his or her actions do not harm another, should not be denied liberty, but that social sanctions, the "natural consequence of his faults" may be "very severe" (86). The fool is marked by "lowness or depravation of taste," "want of personal dignity and self-respect," or "defect of prudence"; he or she compels us to judge and evokes distaste in others (85–7). Certainly Mill did not intend these passages to be wielded against breastfeeding mothers, but it is notable that the descriptions he provides seem easily applicable to mothers who breastfeed in public and to other groups that suffer from intolerance in public space. Breastfeeding mothers in public are routinely accused of lacking dignity, self-respect, and modesty. Mill's canonical position on liberty admits that certain people may suffer "severe" consequences on the basis of actions that harm no one. Moreover, it seems likely that dominant groups are those empowered to define "the fool." Why is the case of the fool not just another case in which "mere displeasure" does not constitute harm? This is a problem for the liberal ideals of equality and autonomy, and may have wide-ranging effects for norm-defying groups.

William Miller (1997) takes disgust more seriously as a political problem, arguing that disgust is a "powerful anti-democratic force, subverting the minimal demands for tolerance"

(206). Miller explores the problem of equality and disgust at length in a chapter on Orwell's socialism. Orwell, in *The Road To Wigan Pier*, discusses frankly his experience as a middle-class social reformer, experiencing disgust toward those beneath him who he would like to help. Orwell claims that the basis of class inequality is that the bourgeois "cannot without a hard effort think of a working man as his equal. It is summed up in four frightful words…*The lower classes smell"* (Miller 240). "It is easy for me to say that I want to get rid of class-distinctions, but nearly everything I think and do is a result of class-distinctions….To get outside of the class-racket I have got to suppress not merely my private snobbishness, but most of my other tastes and prejudices as well" (Miller 1997, 240, 249–50). The problem of disgust, for Miller, is that rational desire is often overcome by the senses: by the physical manifestation of the disgust response. So, concludes Miller, disgust "works against ideas of equality" (251).

Martha Nussbaum (2004b), following the general line of thought in Mill and in Miller, explores the role of discomfort and disgust in the law in *Hiding from Humanity: Disgust, Shame, and the Law*. Because of the hierarchizing effects of disgust, Nussbaum argues that "the cognitive content of disgust is deeply problematic…and its social operation poses dangers to a just society" (70). Indeed, she argues that disgust cannot be a basis for law or public policy. "The use of disgust as criterion has no legal value; the appeal to disgust would be better replaced by other notions, especially notions of damage or harm" (126). Nussbaum argues for a modified Millian harm principle focusing on actual harm done, and refusing to consider disgust as "harmful" merely because it causes displeasure. Nussbaum discusses alleged cases of "disgust-as-harm," but shows that even in these cases, disgust is not the relevant criterion for legal impermissibility—a person's disgust cannot be a "legally salient factor" in a liberal society (163). Disgusting actions cannot be banned because they are disgusting; they can be banned only

if they are shown to produce harm. If a disgusting action causes harm, it can be banned on the basis of that harm rather than on the basis of the disgust.[48] I follow Nussbaum's formulation of the harm principle; indeed, it is imperative because, as we have seen, the social operation of disgust is fundamentally illiberal.

From this theoretical foundation, it is clear that the content of the disgusting is socially constructed within the context of the oppression of women, queer people, people of color, and disabled people.[49] This forges the disgusting into a sword that can be wielded against oppressed groups with the moral superiority and sure-footedness of natural, universal law. Because of this, the conceptualization of public and private spheres absent domination and oppression must use as its "starting point of departure the perspective of those at the bottom of the scale of respectability" (Warner 1999, xi). The experience of breastfeeding mothers and of others who evoke disgust (or who evoke the less intense response of discomfort) is therefore of primary importance in conceptualizing ideal manifestations of public and private spheres. The goal is to create a public sphere marked by equality and autonomy in which disgust and discomfort no longer distorts people's experience of public space (1999, 39).

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[48] Witnessing breastfeeding may cause discomfort or disgust, but it does not cause harm. Indeed, it is difficult to construct a hypothetical argument of breastfeeding as harmful to bystanders. Some might say that breastfeeding could corrupt children, but this seems laughable, especially since children are generally quite comfortable with breastfeeding, and since it is one of the most non-sexualized and non-objectifying ways that they are likely to see breasts. One sees more breast in an advertisement for a lingerie shop than one does while witnessing breastfeeding. So the argument that the disgust of breastfeeding rests on an actual harm is simply indefensible.

[49] On the common ground between the public experience of breastfeeding mothers and disabled people, see Garland-Thomson (1997) and Schweik (2009). Schweik interrogates "ugly laws," like one that demanded that "any person who is diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object, or an improper person to be allowed in or on the streets, highways, thoroughfares, or public places in this city shall not therein or thereon expose himself to public view" (1).

Part 3: In Public with the Breast

In order to theorize the ideal of an equal and autonomous public sphere, we must understand the current lived experience of breastfeeding mothers; how exactly do breastfeeding mothers today encounter oppression in the public sphere? I identify three responses of breastfeeding mothers to their poor fit in the public sphere. The first is exclusion, through which mothers are removed from the public sphere and public visibility despite their legal right to be there. The second is accommodation, through which mothers discipline or manage their own behavior in order to accommodate their deviance within the norms of the public. The third is affirmation, through which a small portion of mothers challenge the norms excluding them.

Exclusion is a response in which the mother either removes herself from the public sphere for breastfeeding or in which the mother is functionally excluded from the public sphere to do so. The logic of exclusion maintains public-space-as-usual. The most basic form of the logic of exclusion occurs when a mother decides to stay home or leaves the public sphere when her baby gets hungry. Cindy Stearns (1999), in a series of interviews with women about their experience breastfeeding, found that many "went to great lengths to make sure that they were not seen breastfeeding outside their homes. Women would nurse in department store dressing rooms and cars" (314). In this view, public life is antithetical to the enactment of breastfeeding.

Because of this, many liberal feminists and others have advocated for lactation rooms in public places, special private rooms in which women can comfortably breastfeed their babies out of sight. Lactation rooms are found in public places like malls, museums, and churches.[50] I argue

[50] I am not speaking to workplace lactation rooms, because they bring up a different set of issues. Most women are not interested in pumping milk openly in workspaces. It is conceivable that women could want to pump openly if breastfeeding culture was different or if work culture moved away from the male ideal worker norm, but the current reality is far removed from that possibility.

that the rise of non-workplace lactation rooms is a form of exclusion masquerading behind a benevolent veneer. That is, while lactation rooms provide choice to breastfeeding mothers, they provide choice within a public context of discomfort and disgust. Many mothers have reasons for wanting to breastfeed in private, whether it is because their baby is to distractible to nurse in public, or because they have other children and need an enclosed space. Lactation rooms provide choice, but it is worth noting that the beneficiary is not just the mother, but also the bystanders who no longer have to see her breastfeeding. As Alison Bartlett (2000) notes, some "women would no doubt be grateful for such consideration, saved from the hostile public gaze. But I feel insulted, being locked away out of sight" (181). Lactation rooms offer the appearance of deep care for breastfeeding mothers, but functionally isolate and remove women from the public sphere. Moreover, lactation rooms deny women the one publicly acceptable reason for feeding in public: that it is necessary for their babies. If feeding in private is available, women who want to feed in public without being excluded or isolated have no publicly acceptable excuse for doing so.[51] Thus the "choice" that the lactation room provides actually operates to restrict choice by defining the appropriate place for the activity. And in this definition of the appropriate place, lactation rooms function to "conceal the lactating body from the public eye," allowing the public once again to forget that breastfeeding mothers exist and have needs (Lane 2013, 10). In an ideal context, lactation rooms would provide women with welcome choice; in cultural context, however, and especially to the extent that they render public breastfeeding even less acceptable, they are troublesome.

Accommodation, on the other hand, occurs when mothers breastfeed in public in a way

[51] On debate.org, one user justifies his "No" response to the "Should women be allowed to breastfeed in public?" forum with the following reason: "Increasingly, public establishments have private places for breastfeeding." http://www.debate.org/opinions/should-women-be-allowed-to-breastfeed-in-public (February 13, 2015).

that attempts to abide by the norms of the public sphere. While some people think breastfeeding in public is never acceptable, others believe breastfeeding in public is acceptable if the mother enacts a requisite set of accommodations. The most common qualification placed on women's public breastfeeding is discretion. Discretion—the demand to hide the act from view—"is how the contradiction between the intimacy of breastfeeding and the antithetical ideals of public space are reconciled" (Lane 2013, 7). The discretion of the accommodating breastfeeding mother takes two forms: invisibility and signals of apology.

Many women attempt to be invisible while breastfeeding—that is, they attempt to pass as if they are not breastfeeding (Stearns 1999, 313). In order to approximate invisibility, mothers engage in a number of practices, such as wearing special clothing, or nursing the baby in a carrier. Women frequently "speak with pride about no one even knowing what they were doing, when, in fact, they were really breastfeeding" (Stearns 1999, 313). The goal of invisibility has political implications—unsurprisingly, invisibility. To achieve invisibility, the mother must go out of her way not to draw attention to herself. If she engages in discussion with someone and they approach her, they are likely to realize that she is engaged in breastfeeding and to burst her tenuous invisibility. In this way, the goal of invisibility forces the mother out of active participation in public life—one cannot be an active participant in social life and also invisible. Mothers need not always pursue active participation in public life, but it is key that they retain the ability to do so; invisibility precludes the ability to be an active participant. Moreover, if she is successful in achieving invisibility, the outcome of her success is to reinforce the idea that the public sphere is a disembodied place and to render maternity politically invisible.

When invisibility is not possible, accommodating breastfeeding mothers enact what Lane calls a signal of apology: "The performance of public breastfeeding must involve some sort of

gesture or form of bodily comportment that will convey to others the mother's modesty" (2013, 9). A signal of apology can include wearing a nursing cover or blanket over the baby, ending conversation, averting eyes, or "stepping back" (Lane 2013, 9). When women enact these signals of apology, public reception to their breastfeeding is usually not hostile, though women often find that others react to them in equally apologetic ways, backing off and giving space (Lane 2013, 9).

In recent years, it has become commonplace to buy a specialized nursing cover rather than to cover with a blanket. The nursing cover considers the comfort of others while discounting the comfort of the mother and the baby: Stearns finds that many women will use a cover even if they worry that it is unsafe for the baby due to extremely hot conditions (1999, 313).[52] These covers, which look like large tents, have rigid material that keeps the top open so the mother can gaze at her nursing baby even while covered. It is notable that in promotional materials for nursing covers, the mother is generally looking lovingly at her baby, rather than engaged with the outside world. The culture of the nursing cover in this way reinforces the split between motherhood and publicness—while the mother is breastfeeding she is engaged in breastfeeding, not with the wider world. She is passive, not active. "Looking for a little extra privacy while nursing in public? Only Bébé au Lait Nursing Covers have a patented open neckline that holds the cover away from mom and baby—allowing them to maintain eye contact so they can continue to bond while breastfeeding on the go."[53] *Pregnancy & Newborn* featured nursing

[52] It is also of note that babies, especially if they are older, often dislike nursing under covers. They find it disorienting and isolating and may refuse to nurse in such a position. In these cases, nursing "with discretion" may not meet the needs of the baby. And nursing covers definitively remove the baby from public space, raising questions about the ability of parents to bring children with them to public spaces.

[53] Bébé au Lait. 2014. https://www.bebeaulait.com/breast-feeding/nursing-covers/bebe-au-lait/amalfi.html (August 22, 2014).

covers in their "2014 Registry Guide" with the odd commentary: "Maintain eye contact with baby while breastfeeding in front of an audience." (They seem to forget that there is nothing inherently difficult about maintaining eye contact with baby while breastfeeding in public. It only becomes problematic once a cover is introduced.) The nursing cover erects an isolated and isolating private bubble around the mother and her baby. So while she remains in public, she erects a private space around herself; she may as well hang a placard around her neck: "Do not approach! Do not engage!" A mother ensconced under a nursing cover is the opposite of invisible; she is hypervisible. She is calling attention to her deviance, to her unequal treatment in public.

The signals of apology of accommodating breastfeeding mothers are the dunce caps or scarlet letters of the public sphere. Women are made to apologize for being in public, for being women, for choosing to breastfeed. It is an enactment of inequality. Accommodating breastfeeding mothers, though they remain in public, are functionally excluded from active public life. Breastfeeding that is practiced in this way maintains the norms of the public sphere by reinforcing the split between embodied activities and public participation, between motherhood and active public life. The onus here is firmly on the mother to take into account the discomfort of others rather than the comfort of her and her baby.

It is important to note that my argument does not imply that women who exclude themselves, use lactation rooms, accommodate the public norms, or otherwise discipline their own breastfeeding have done anything wrong or blameworthy. On an individual basis, given the constraints, these actions are understandable. My argument should not be construed as saying that the desire to breastfeed in private is itself blameworthy or necessarily evidence of false consciousness.

The third response of breastfeeding mothers to the poor fit between breastfeeding and the norms of the public is affirmation. Unlike exclusion and accommodation, affirmation represents a challenge by breastfeeding mothers to the norms excluding them. A mother who reacts to the poor fit between breastfeeding and the public sphere through affirmation refuses to accommodate the norms of the public, does not attempt to be invisible, and does not enact signals of apology. She is often subject to censure, the severity of which depends on context. Others often describe the way in which these mothers perform public breastfeeding using the phrases "whip it out" and "flashing." "Well, you just don't want to whip it out in public—you know, whip your boobs out for everyone to see," says one of the mothers Lane interviews (2013, 12). "I just felt like I shouldn't be flashing my breasts in front of him," says one of the mothers Stearns interviews (317). The phrases "whip it out" and "flashing" are notable because they indicate that the mother is transgressing norms of sexuality (showing her breast, at least for a moment while the baby latches).

Women who engage in this type of breastfeeding are not engaging in gratuitous nudity or flaunting anything. In fact, affirmation may often look similar to invisible accommodating breastfeeding—the difference is found in the intention and actions of the mother while doing it, not in the amount of skin she is showing. What is so transgressive about the affirming breastfeeding mother is that she insists on breastfeeding in public in a way that rejects public norms. Affirming breastfeeding mothers refuse to ignore their own desires—for comfort, for participation, or for equality. They could meet their babies' nutritional needs through exclusion or accommodation, but they do not. Affirmation also actively challenges the politics of shame and disgust that marginalize breastfeeding women as described by Warner (1999): affirming breastfeeding mothers may or may not be immune to the pangs of shame that occur when treated

as an object of contempt in public, but they have made a decision to privilege their own desires above the comfort of others, to demand equal treatment, and to remain in the public sphere.

Though much affirmation is not explicitly political, it can be: nurse-ins have become a commonplace protest against institutions that discriminate against breastfeeding mothers. In these protests, many mothers gather and occupy a space while nursing their babies. These protests are effective because they make visible what was invisible, and because they explicitly challenge the split between maternal practices and public life. Here are mothers engaged in a female caregiving activity that, when done together, constitutes a political act. Nurse-ins are one of the most tangible ways that mothers have been agitating to challenge the norms excluding women from full inclusion in public life.

Breastfeeding that is enacted as an affirmation challenges norms that would exclude breastfeeding mothers. Affirming breastfeeding challenges public-space-as-usual, making visible the embodied aspects of women's lives. Affirming breastfeeding stands as a counter-friction to the politics of shame and disgust that operate to rank and to disempower norm-defying actors. It is also true, though, that affirming breastfeeding relies on a good deal of privilege. Mothers whose breastfeeding intersects with other forms of difference would experience more public backlash against affirmative nursing than would normative, attractive, heterosexual mothers. Some mothers are in a better position to practice affirmative breastfeeding than others.

Will affirmative breastfeeding make others uncomfortable? Probably. As we have seen, discomfort and disgust are often implicated in public breastfeeding. Miller writes that the disgusting, as well as, I argue, that which causes discomfort, "force[s] us to look and notice, or to suffer self-consciousness about not looking or not not looking" (1997, 82). What does respect demand? There is no answer to fit all occasions, but in an ideal society we should like to see

others treat a breastfeeding mother as a fully human actor—one who is entitled to embrace in public all parts of her human life—not as someone who is temporarily circumscribed into a realm of invisibility. In the next section I turn to the theory of an ideal equal and autonomous public sphere.

Part 4: Equal and Autonomous Public and Private Spheres

If breastfeeding mothers and other norm-defying actors experience marginalization in the public sphere, the question is how an ideal public could espouse equality and autonomy. The goal is not equal access to the ability to act like the normative actor, but true equality as the ability to experience public space, to participate in public life, and to opt for privacy while fully experiencing one's difference. What is needed is an ideal in which "publicness and privacy [are] equally accessible to all" (Warner 2002, 21). As discussed earlier, I agree with Nussbaum that the first requirement is that it is impermissible to prohibit acts on the basis of the disgust or discomfort of onlookers; that is, any discomfort or disgust onlookers feel at seeing public breastfeeding does not constitute harm. But legal permissibility (the right to breastfeed in public) is not enough. An equal and autonomous public sphere must achieve more than legal access to give women the preconditions to be able to exercise the capability of breastfeeding; in this section I argue that this ideal has three main features.[54]

The first feature of an equal and autonomous public sphere is that every person must be able to occupy public space and the public sphere while embracing all significant aspects of their identity. Thus demands for actors to cover or to tone down their difference would not be

[54] My claim here echoes but is slightly different in focus than Iris Marion Young's definition of a heterogenous public: "The concept of a heterogenous public implies two political principles: (a) no persons, actions, or aspects of a person's life should be forced into privacy; and (b) no social institutions or practices should be excluded a priori from being a proper subject for public discussion and expression" (1990, 120).

tolerated.[55] Individuals are empowered to define what aspects of their lives are significant to their expression. As Iris Marion Young puts it, the ideal of the public must include "persons stand[ing] forth with their differences acknowledged and respected, though perhaps not completely understood, by others" (1990, 119). Breastfeeding mothers would not need to exclude themselves from the public sphere, to discipline their own breastfeeding, or to offer signals of apology for their difference. They would have the ability to participate actively in all public life, even if a baby was along for the ride, nursing.[56] The ability to experience life in the public sphere will not hinge on the ability to act like the ideal public actor.

The second feature of an equal and autonomous public sphere is that the comfort of others cannot weigh more than an individual's own needs in public. A breastfeeding mother may reasonably take into account any number of social factors in her decisions about how to undertake her public breastfeeding. But it is problematic if the needs and comfort of others become the primary factors under consideration. It is even more problematic if her own desires and needs and the needs of her baby are actively denied to preserve the comfort of others. What must be avoided are cases like the one Stearns (1999) found in which women use nursing covers even though they worry that the cover is endangering their babies in extreme heat.

The third feature of an equal and autonomous public sphere involves the ability to leave the public sphere—all people must be able to opt for privacy in a way that does not entail invisibility or coerced exclusion. Some women may continue to prefer to breastfeed in relatively more private places than will others. Some women may not be comfortable baring their breast, or

[55] See Yoshino 2007.

[56] What this would look like depends on what type of public participation the mother is engaging in. Certainly public activities like voting, debating, and conducting public business can be achieved while a baby is actively nursing. In other cases, the mother can choose the appropriate way to combine her breastfeeding and public life.

they may not be comfortable doing so because of the specific people they happen to be in public with. Moreover, many babies go through phases of being too distractible to nurse in public and may require privacy in order to feed. This is the definition of "autonomy"—that women can freely decide how and where to enact their breastfeeding.

How can we safeguard women's ability to opt for privacy in an autonomous way? A liberal scheme must allow women the ability to make the choice for privacy without second-guessing those choices. We must keep in mind Young's definition of privacy as "an aspect of his or her life and activity that any individual has a right to exclude others from. I mean here to emphasize the direction of agency, as the individual withdrawing rather than being kept out" (Young 1998, 441). The important characteristic of autonomous privacy is that it is distinct from invisibility. The problem is that in the context of an unjust reality, we cannot assume that women's desire to breastfeed privately is an exercise of autonomy.[57] Breastfeeding mothers have not been equal partners in the construction of the norms that regulate public breastfeeding; the decisions women make about public breastfeeding are constrained within the current, unequal context. Today, "the carefully managed and often secretive nature of much breastfeeding reveals volumes about women's status" (Stearns 1999, 322). But in a context of equal and autonomous public and private spheres, the use of lactation rooms, for example, can be considered unproblematic. The key difference is that privacy should be privileged, but invisibility should be guarded against.

At this point in the argument, it is necessary to consider whether the ideal I have defended is generalizable beyond the case of breastfeeding in public. I take it to apply fairly

[57] "Increasing women's choices also entails engaging the social construction of desire, in order to understand the degree to which the options that women prefer and the choices that women make are themselves the products of restriction, coercion, and force" (Hirschmann 2003, 202).

easily to the cases of queer people, disabled people, and people of color in the public sphere. But what about cases that moral intuition may deem impermissible, such as public nudity or public sex?[58] I have no firm conclusion about these cases, but like Nussbaum I insist that the permissibility of these behaviors must not hinge on the disgust or discomfort they evoke, or on custom, but on evidence of harm. It is certain, as my argument shows, that disgust and discomfort are used to marginalize and to oppress. Prohibition of these acts would have to hinge on clear, demonstrable harm. Nussbaum applies her theory to the case of public nudity:

> What about public nudity, just walking around without clothes, without any sex acts or other behavior of a sort that might be thought to frighten or threaten children? It seems...innocuous; in many countries it is routine beach behavior....People may think it is a disruptive invitation to sex, but that is their problem…. Reasons supporting laws against public nudity are weak. (2004b, 303–4)

What is key is that argumentation must not admit disgust or discomfort as harm; discussion must focus on harm done, not on the fact that some people experience discomfort.

Another question that this ideal raises is whether people should be held responsible for their discomfort or disgust. Is an agent who feels discomfort or disgust upon seeing a woman breastfeed blameworthy? What is important is their reaction to the feeling of discomfort or disgust. A non-oppressive public sphere would be one in which the burden of potentially oppressive discomfort is on the person experiencing discomfort, not on the person who is evoking discomfort. Likewise, a person can experience disgust, recognize their disgust, inquire into why they are disgusted, and cope with the disgust in a way that does not impose moral indignation on the other. A line of thought such as, "Why am I disgusted by this? Is that valid?" is ideal. Of course, this may not always be possible; it is not expected that every person will be

[58] See, for example, "Sex in Public" by Lauren Berlant and Michael Warner, in Warner 2002: 187.

as self-aware as Orwell ruminating on his distaste for the smelly lower classes. In an equal and autonomous public sphere, the person evoking discomfort cannot be removed, but the person who is experiencing discomfort or disgust is welcome to leave if that is necessary. It must be stressed, though, that a public sphere in which everyone else retreats, leaving the breastfeeding mother alone but "in public," is still an exclusionary public sphere; the retreat of those who are uncomfortable or disgusted is not the ideal outcome, though in sufficiently small numbers it may be a reasonable outcome. Better yet a society that nurtures the ability of people to interrogate themselves in a thoughtful manner, that encourages not the "I must confess no object ever disgusted me so much as the sight of her monstrous breast!" of Gulliver, but rather a deep skepticism of the disgust response itself.

Conclusion

At the close of this interrogation into the nature of the ideal public sphere, though, the pressing question is: what is a liberal to do? The laws are, for the most part, good. Breastfeeding mothers have legal access to public space. It is not possible or desirable to legislate what people can be comfortable viewing, or how people will respond to a disgust reaction. The fact remains that breastfeeding mothers experience unequal treatment in the public sphere, and that this is indicative of a failure to achieve liberal ideals. This is a case in which culture must change to realize liberal ideals, even as liberalism is for the most part unable to directly challenge norms.

Warner, following Fraser, argues for the potential of counterpublics to effect change. Fraser defines counterpublics as "parallel discursive arenas where members of subordinated social groups invent and circulate counterdiscourses" in cases where groups of people are excluded from the dominant public sphere (1990, 67). The ideas of counterculture and difference are an apt response to the imperative of the public sphere that anyone is welcome, so long as they

act like the ideal public actor. Warner, expanding on this theory, argues that people in counterpublics are part of a world-making enterprise. That is, the actions, speech, and embodiment of members of counterpublics attempt to "realize the world understanding they articulate" (2002, 114). Norm-defying actions can begin to create a world with different norms. This is especially significant for norm-defying actions that have to do with issues that are generally thought of as private, like breastfeeding. The public enactment of normatively private behaviors is by definition potentially transformative; in making these private behaviors public, members of counterpublics experiment with a "world-making publicness."

> It is often thought…that the public display of private matters is a debased narcissism, a collapse of decorum, expressivity gone amok, the erosion of any distinction between public and private. But in a counterpublic setting, such display often has the aim of transformation. Styles of embodiment are learned and cultivated, and the affects of shame and disgust that surround them can be tested, and in some cases revalued. (2002, 62–3)

Warner points to the potential of countercultural spaces, discourses, and behaviors to change the very subordination that defines the group as a counterpublic.

What is difficult, of course, is that world-making enterprises directly challenge social norms, and people who engage in world-making enterprises are thereby subject to social sanction. A woman who breastfeeds in public under a nursing cover is not engaged in world-making publicness—she does not have the aim of social transformation. Or, rather, her feeding is engaged in world-making—but the world she is perpetuating through its enactment is the one that already exists, not a transformative one of equality and autonomy. But affirmative breastfeeding can be an enactment of world-making publicness. In this way, the publicness of public breastfeeding can create a world in which the hypersexualization of breasts, and the attendant cultural discomfort with breastfeeding, is diminished.

The transformative potential of Warner's world-making publicness is the idea that

shame and disgust "can be tested, and in some cases revalued" (2002, 63).[59] People are taught—both explicitly, when told that it is inappropriate, and implicitly, when they see people leaving the public to breastfeed—that breastfeeding in public is an inappropriate act. This is a learned response. In cultures where women breastfeed in public without fanfare, it is treated without fanfare. This is heartening insofar as responses that are learned can be unlearned—or at very least prevented from taking hold in future generations.

Of course, arguments based on generational change are unsatisfying to those who are concerned about the oppression of women today. There is a role to be played immediately by liberal institutions, insofar as they are able to enact changes that will secure equality and autonomy for breastfeeding mothers. But beyond that, we should consider the type of "nudges" that might be designed to support the equality of breastfeeding mothers. For example, when stickers are used to designate that breastfeeding is welcome in a space, wording should be carefully selected. "Breastfeeding and bottle-feeding welcome here, and anywhere in our establishment" would be a better message than "Lactation Room," which has the potential to restrict the definition of the appropriate space. Notices in a bathroom that say "Please do not breastfeed here—you are welcome in our space" might help, too, to slowly change public expectations.

The slow pace of change as a result of counterpublic speech is discouraging to feminists. Nevertheless, it points to the importance of women who undertake affirmative public breastfeeding. This is not to say that affirmative public breastfeeding is the only (or most) valid type. What it does suggest is that there is an indispensable role to be played by women who

[59] See also Miller 1997, 12; Nussbaum 2004b, 94–5.

accept the possibility of social exclusion and stigma and breastfeed in public in an affirmative manner. Their “whipping it out” constitutes a type of counterpublic speech that challenges illiberal public norms: norms of public space as male and bodiless, norms of the objectification and sexualization of breasts, norms of the appropriate use of public space, and the social construction of the content of the disgusting. Perhaps, after all, “whipping it out” is as transgressive as conservative critics presume it to be.

CHAPTER 3. THE POLITICS OF MATERNAL ACCESS TO BABIES AND MOTHER-BABY SEPARATION

A breastfeeding mother and her baby are two separate beings: they are, after all, no longer bound together by the umbilical cord, the baby no longer resides in the confines of the mother's womb. But they are bound together in a distinct way. The bodily needs of one (hunger, thirst, warmth) are fulfilled by a physiological process (lactation) in the other. A newborn eats every two to three hours, sometimes more, and doesn't require any additional nutrition than what is provided by the mother. If the mother is separated from the baby for long, her breasts may get engorged with the milk that has not been consumed; this is a painful condition for the mother and can lead to medical problems like clogged ducts or even mastitis, a dangerous infection if untreated. Failure to empty the breasts also leads to a lower milk supply, as the body adjusts to the absence of the baby. Functionally the mother and baby are connected, the bodies of each requiring the body of the other on an ongoing basis. The baby and the mother—often referred to as the "mother-baby dyad"—are intimately connected at the physiological level, even though they are two separate beings.

The nature of this unique relationship demands special political consideration at institutional and policy levels. Indeed, policies on the face neutral to considerations of gender often have differential effects on breastfeeding mothers and babies. For example, sentencing guidelines may demand that a mother is imprisoned for a property crime, curtailing the infant's ability to breastfeed. A judge may decide that a father is entitled to joint custody, including weekend overnight stays, thereby interfering with the child's breastfeeding routine. Cases like

these are difficult, and the well-being of mothers and babies is ill served if the breastfeeding relationship is not given specific consideration.

How, then, should the state conceptualize the breastfeeding relationship? In what ways do breastfeeding mothers and babies require special treatment or consideration? How can the state respect the unique position of breastfeeding mothers without undermining women's autonomy (including the autonomy of women who decide not to breastfeed), and without grounding policies in an ideology of traditional gender assumptions?

In this chapter, I argue that the breastfeeding relationship requires specific, distinct consideration in policy and law. Such consideration does not entail gender discrimination, but rather appropriate gender-responsive treatment that is sensitive to the realities of the lives of breastfeeding mothers and babies. Failure to grant special consideration to breastfeeding ignores the reality of breastfeeding mothers' lives, discounting distinctly female experiences and relationships in the name of "gender neutrality."[60]

I frame breastfeeding as a central capability within a liberal capabilities approach. Specifically, I show that the state must privilege maternal access to babies in order to achieve a society that allows women to freely decide to breastfeed. Access is the conceptual focus of my argument; I argue that breastfeeding mothers must have access to their breastfeeding children, and that coerced separations are generally inappropriate.

I begin my argument by expanding my contention that breastfeeding is best seen as a capability—grounded in the central capabilities of bodily health, bodily integrity, emotions, and affiliations—rather than as a right. I demonstrate that an emphasis on breastfeeding as a

[60] This point echoes my argument in chapter 1: while gender equality is a laudable goal, gender *neutrality* is not. Adopting gender neutrality as a goal will often have the effect of distorting women's experiences.

capability is accurate, and is a helpful guide to appropriate social and political action. In the next section, I turn to the importance of maternal access to breastfed children, arguing that access is key to mothers' capability to breastfeed. I interrogate the concept of access, asking what counts as access to a breastfed child. I insist that the ability to pump breast milk cannot be a substitute for access, despite popular belief to the contrary. Significantly, I insist that access does not imply captivity; mothers' decisions to separate from their children are consistent with access and are likewise a necessary capability for mothers' well-being. In the final sections, I closely examine two difficult case studies from the standpoint of maternal access to breastfed children: maternal incarceration and parental custody disputes. These case studies allow me to examine the issues more closely, providing clarity to my claims about maternal access to breastfeeding children.

Part 1: Breastfeeding as a central capability

In a liberal society, we assume, women have the right to breastfeed. But what is this right, and what does it imply? What are the bounds—under what circumstances can this right be withheld? Moreover, what does it entail? Does it imply mere noninterference—that no authority will forcibly prevent a woman from breastfeeding her child? Or does it imply more, a positive right to conditions under which breastfeeding is practicable? And whose right is it? Is it the mother's right to decide how to feed her baby? Is it the baby's right to be breastfed? Is it a right that the mother and baby hold jointly? What actors are responsible for fulfilling these obligations? It's possible to answer all of these questions, but the language of rights is not particularly helpful in the formulation.

The most fundamental problem with speaking of breastfeeding as a right is that it is unclear whose right breastfeeding is: does the mother have a right to breastfeed, or does the baby have the right to be breastfed? Arguments have been made on both sides. "[How can a mother's

right to exercise "freedom of choice" about how she feeds her infant (which presumably means the freedom *not* to breastfeed) be seen as equal to or, in fact, take precedence over the baby's right to his mother's milk?" (Kent 2004: 182). Meier and Labbok (2010) helpfully point out that the "perceived conflict between a child's right to breastfeed and a mother's right to choose her method of infant feeding" is caused by seeing the mother and baby as two separate entities, whereas in reality their interests are intertwined (1100). I insist, though, that the mother's autonomy cannot be subsumed to the right of the baby, or to the right of the "mother-baby dyad."

Furthermore, I would argue, this conflict is also an effect of the language of rights itself—rights are individualistic in nature, and obscure social obligations. As Mary Ann Glendon notes, "our rights-laden public discourse easily accommodates the economic, the immediate, and the personal dimensions of a problem, while it regularly rejects the moral, the long-term, and the social implications" (171). If we talk about the "right to breastfeed," we invite the possibility of creating a system in which women are not prevented from breastfeeding (a negative right), but in which the social and institutional conditions for breastfeeding success are overlooked. An attempt to guarantee positive social conditions on the basis of rights is possible, but difficult because "rights" mean different things to different people.

As I argue in the introduction, the difficulties inherent in framing breastfeeding as a right make it fruitful to think of breastfeeding, instead, as a central capability of women in a Nussbaumian capabilities framework (2000, 2003, 2011).[61] Thinking of breastfeeding as a

[61]Meier and Labbok (2010) argue that breastfeeding should be viewed within a capability approach, but their emphasis is on breastfeeding as a global human right. Because of their rights framework and international focus, their argument is distinct from mine.

capability does not mean that it's never useful to discuss the rights involved in the practice, but that it is more precise and more useful to talk about it primarily in capabilities language.[62]

Furthermore—and this is perhaps its main advantage—the capabilities approach is much better positioned than a rights-based approach to transcend the supposed conflict between the needs of the mother and the needs of the child. While a rights-based framework finds itself pitting rights against each other (the mother's right, or the child's?), the capabilities approach insists that we consider "each and every person, taken one by one, respecting each of them as an end, rather than simply as the agent or supporter of the ends of others" (Nussbaum 2000: 55). Each breastfeeding child and each breastfeeding mother must, individually, be treated as a bearer of fundamental capabilities that are deserving of respect. A child's central capability of bodily health ("being able to have good health…to be adequately nourished") cannot militate against the fundamental capabilities of the mother for bodily integrity and reproductive agency (Nussbaum 2000: 78). It is not acceptable to collapse the fundamental capabilities of mother and child into a single list, or to prioritize any one capability over another lexicographically (Sen 2005: 158).

Each child, indeed, has a fundamental capability of bodily health that must be respected and enabled through the material conditions of society. It is also true that breast milk is the optimal infant nutrition. It does not follow that infants are, therefore, entitled to human breast milk, even as they are entitled to adequate nourishment. In some cases, as in the case of premature or sick infants, nourishment may need to come from breast milk in order to be adequate. For this reason, sick and premature infants have priority of access to breast milk from human milk banks if it is not provided by their mothers. For healthy infants in the United States,

[62] On the relationship between capabilities and rights, see Nussbaum 2003, Sen 2005.

properly prepared formula qualifies as adequate nourishment, even though it is not "optimal."[63] If government or parents had an obligation to ensure that children always received optimal nutrition, children would never eat birthday cake or taste juice. When the child's entitlement is properly viewed as being able to be adequately nourished, rather than as being able to be breastfed, his or her capability does not come into conflict with the mother's capabilities.

What the capabilities approach elucidates is that the capabilities involved for the mother and the child are different capabilities: for the child, bodily health through adequate nourishment; for the mother, bodily health and integrity, reproductive choice, emotions, practical reason, and affiliation. We cannot subsume the capabilities of each under the needs of the other; each must be considered separately.

So the capabilities approach demands, I argue, that breastfeeding is a fundamental capability of women, and that the material conditions for exercising successful breastfeeding must be defended by the state on the basis of the woman's dignity and well-being, not on the basis of the health of the child. But what conditions does the capability of breastfeeding require? To create a society that enables mothers to be successful at breastfeeding, far-reaching, radical changes are necessary. A society that enables successful breastfeeding offers women good prenatal care. Pregnant women receive reliable information on child health, nutrition, and the benefits of breastfeeding, and on principles of good breastfeeding. Women require protection from misinformation on infant feeding. Women need legislative protection that allows them to combine work with breastfeeding, including reasonable maternity leave and the right to

[63]In this chapter I do not consider the case of breastfeeding in developing countries. In developing countries, formula use is often highly correlated with infant mortality, and is therefore difficult to reconcile with the child's capability of bodily health. This is not a measurable concern in the United States, though the child's capability of bodily health suggests that parents require training in safe formula preparation and storage.

breastfeeding break time. Women need baby-friendly health facilities that ensure the best initiation to their breastfeeding relationships. Organizations need to fund and promote human milk banks and access to human milk for sick and premature babies. Women need access to low-cost lactation services and breast pumps. Fathers and other partners need training in breastfeeding support and in how to help overwhelmed new mothers who are trying to get a handle on the logistics of breastfeeding. New mothers need excellent screening for postpartum mental illness. A society that fails to provide these material conditions is one that suffers from barriers to women's capability to breastfeed. Nussbaum asks, "Where do people not say, 'I want to do X, but the circumstances of my life don't give me a chance'?" This sentiment is often expressed in the case of breastfeeding. "To this sort of common discontent, the [capabilities] approach responds by saying, "Yes indeed, in some very important areas you ought to be able to do what you have in mind, and if you aren't able, that is a failure of basic justice" (Nussbaum 2011: 123).

Another material condition that women require in order to be successful at breastfeeding is access to their breastfed children. At first glance this may seem obvious: a woman needs to be with her child in order to put him or her to her breast. But the ability to express and store breast milk, and the rise of personal electric breast pumps that has occurred since the 1980s, has created a system in which it is possible for women to continue to lactate in the absence of their children. At the same time, my argument that mothers require access to their breastfed children does not imply that mothers cannot decide to separate from their children; mothers must not be held captive by their breastfed children, unable to leave the house, to work, to separate from them. In the next sections, I explore the concepts of access and separation more closely.

Part 2: Maternal Access to Breastfed Children

One of the most important variables of success in breastfeeding is maternal access to babies. It may seem straightforward that access to babies is a necessary component of the capability of breastfeeding, but it is not. Some will declare that breastfeeding mothers and their babies can be permissibly separated even against the mother's wishes because it is possible for the mother to express milk to be fed to her baby by bottle. I argue that it is not permissible to separate breastfeeding mothers and their infants even if time and space is given for pumping, and that it is an infringement on the autonomy and well-being of breastfeeding mothers and their babies to be forced to pump and bottle-feed rather than to have the opportunity to engage in direct breastfeeding. In this section I will explore this issue in more detail, probing what it means for breastfeeding mothers to live in what has been called a "pumping culture," in which the decision to breastfeed for many women functionally means a decision to spend more time pumping milk with a machine than feeding their infants directly.

Throughout this investigation, care must be taken to avoid justifications for maternal access to babies that are either insufficiently feminist or anti-feminist. In fact, many arguments made do not respect or protect the autonomy of mothers. One way in which many of these arguments fall short is in their reliance on attachment theory to justify unequal gender relations. Care also must be taken to avoid discussing the need for mothers and babies to be able to stay together in a way that suggests that women are nothing more than reproductive bodies (Tabbush and Gentile 137). Mothers' capabilities, in short, can never be outweighed by children's capabilities. Each mother must be taken as an end, rather than as a means to an end. When the issues of access is argued carelessly, the woman is lost and dehumanized, spoken of as an object: a reproduction machine, a womb, or a breast.

In explicating the importance of maternal access to babies, it is helpful to review some basic breastfeeding physiology (Kent 2007). A mother's milk supply adjusts to meet her baby's demand; that is, the more a baby sucks, the more milk a mother will produce. The process is not immediate, but functions over time. So a mother must continue nursing to "keep up" her supply, especially in absences from her baby. If a mother is away from her baby and misses a feeding, failure to express the milk will indicate to the body that the baby doesn't need that milk, triggering a lower supply. In the absence of her baby, a mother can express the milk by hand or with a breast pump. Breast pumps are therefore important for mothers who spend time separated from their children. Breast pumps, though, are inefficient compared to a baby's suckling.[64] Mothers who pump frequently, therefore, often see "dwindling milk supply over time" (Philip et al. 2002: 71). This is one likely reason behind the "increased likelihood that women stop breastfeeding in the 3-month interval marking their entrance to employment" (Duberstein Lindberg 1996: 248). Lubold and Roth find that access to one's child during working hours is one of the two most significant predictors of breastfeeding success among working mothers (2012: 164). Moreover, studies suggest that early introduction of bottles is associated with breastfeeding difficulty, because it can "render suckling less effective or lead to breast refusal" (Newman 1990). And babies who have been fed exclusively at the breast will often reject bottles, making maternal separations difficult (Rich et al. 1994). Evidence suggests, then, that pumping

[64]Studies have shown that women spend less time pumping than babies spend nursing, and that the ability to efficiently remove milk with a pump varies among women; "milk removal using a breast pump was compromised in some mothers" (Mitoulas et al. 2002: 349-50). Another study indicates that most mothers exclusively pumping for preterm infants experience a marked decrease in milk supply after pumping for three to four weeks (Hill et al. 2005). Indeed, "making enough milk is a common challenge for moms who are exclusively pumping" (La Leche League 2010: 342).

and bottle feeding is a viable option for some, but not for all, mothers and babies (Kelly 2009: 144).

For some mothers, a lack of access to their babies will create a context that makes breastfeeding impossible. But it is worth questioning the issue of pumping even for women who respond well to a pumping regimen. If breastfeeding is a central human capability, does a society that supports pumping—but not direct breastfeeding—fulfill the material conditions necessary for women to exercise the capability? This is not a merely philosophical dispute: the Affordable Care Act's Reasonable Break Time for Nursing Mothers entitles qualified mothers to unpaid breaks "each time such employee has need to express the milk" until her child is one year old. As written, this policy does not protect mothers who wish to take breaks to directly breastfeed their babies on site.[65] Assuming that a mother is physically capable of pumping and storing milk, is the expectation—indeed, requirement—that she do so an impediment to the capability of breastfeeding?

Breastfeeding and pumping are two distinct practices. Some benefits of breastfeeding, it is worth noting, are not conferred by the milk itself, but by the process. Jaw development is aided by suckling at the breast, rather than at an artificial nipple. "Breast suckling aids proper development of the jaws which form the gateway to the human airway. Bottle, pacifier and digit sucking deform jaws and airways" (Page 2001). There is also the question of whether benefits are provided by the milk as substance, or by the entire act of breastfeeding, including the cuddling, the closeness, the connection (all of which, of course, can be done without the act of

[65]In 2013, a mother was fired for trying to use the ACA's break time provision to go to her son's nearby daycare to feed him directly. She filed a suit with the EEOC (Sathian). Jill Lepore reports that "At the University of Minnesota, staff with keys can pump their milk at the Expression Connection, but the sign on the door warns: 'This room is not intended for mothers who need a space to nurse their babies'" (Lepore).

breastfeeding). And what changes in the composition of human milk over time? Do the documented health benefits of breastfeeding persist in the case of frozen, reheated breast milk? "Breast milk is a substance; breastfeeding is a practice. Attention to both substance and practice is at the root of scientific approaches to establishing the biological benefit of breastfeeding" (Hausman 2003: 17). Some researchers, therefore, are now calling for studies "relating expressed milk feeding to health outcomes" (Geraghty et al. 2013: 185).

Whether or not pumped milk retains the benefits of breastfeeding, many mothers hate pumping. Feeding a baby at the breast, even at its worst, is a relationship; pumping, at best, is a chore. Some women "may feel…concerned that 'mothering with machines' means the loss of something important to their relationship with their infant and their body, or inappropriate collusion with the biomedicalization, commercialization, and surveillance of breastfeeding" (Johnson et al. 2012: 186). "Breast-feeding involves cradling your baby; pumping involves cupping plastic shields on your breasts and watching your nipples squirt milk down a tube….Pumping is no fun—whether it's more boring or more lonesome I find hard to say" (Lepore). Of course, the unpleasantness of pumping doesn't necessarily render it problematic. There are many legitimate reasons to pump breast milk. Parenthood involves lots of chores; for many, pumping is just another added to the list. And there is evidence that many women appreciate the flexibility that pumping provides and the control that it gives them (Johnson et al. 2012). But the relevant question is whether, in light of all this, a woman's ability to pump fulfills her fundamental human capability of breastfeeding. I argue that it does not. Access to pumping is categorically different than access to one's child. The ability to pump is not the ability to breastfeed.

At bottom, women's reasons for liking or disliking pumping breast milk are irrelevant. Some women will, on balance, decide that pumping is empowering. Others will experience pumping as dehumanizing. Some women will have a hard time pumping and an easy time breastfeeding; others will have a difficult time breastfeeding and an easy time pumping. Each breastfeeding mother will navigate these issues on her own. What is important from a political perspective is that the material conditions of society and of institutions aren't such that women are made to choose one particular mode of lactation. A society that enables pumping is not, thereby, a society that enables breastfeeding. A woman who wants to breastfeed her child should not face a set of circumstances that only allow her to pump, and then be told that she has been enabled to breastfeed. The capability of breastfeeding requires that women are enabled to directly feed their babies at the breast, or to pump breast milk, or to decide not to exercise that particular capability at all. The capability of breastfeeding, therefore, requires maternal access to babies.

Part 3: Separation and Trusting Mothers

Access, however, does not imply bondage. Access to babies is a capability, and the political goal is merely that women have the capability to access their children—not that they exercise that access in certain prescribed ways. Women have historically been subject to various demands to act like a "good" mother, and that definition has changed over time. Maternal separation decisions have been treated with varying degrees of opprobrium, and have been heavily regulated through law and norms. Legal regulation of maternal separations takes many forms, and is extensive. It is found in policies and regulation of adoption, surrogacy, welfare, workplaces, childcare, custody, foster care, immigration, family leave, and respite care (see Sanger 1996: 381).

Underlying many of the laws and norms that incentivize different maternal behaviors is the assumption that separating from children is an "extraordinary measure." Carol Sanger shows how "the laws of heaven and nature, of science and the state, have been invoked over the last hundred years to create an ideal form of motherhood in which maternal presence has become the essence of good mothering" (Sanger 378). But, she points out, "separating from children, in one form or another, is simply something mothers do" (381). She demonstrates that maternal self-interest is regarded, both in culture and in law, as the least acceptable reason for maternal separations (433). Because of this,

> The present system fails to take into account the interests, preferences, and concerns of mothers themselves. A peculiar oversight! As a general matter we put immense faith in maternal abilities and judgment with regard to raising children. Yet there has been a pronounced lack of interest in what mothers have to say about *separating* from children by those who make and apply the law. (Sanger 381)

It is imperative that women's decisions to separate from their breastfed children are respected. Anything less is a profound infringement on autonomy, reducing mothers' capabilities in many other key areas.

When women's separation decisions are criticized, it is often on the grounds of "harm to the child." A history of Freudian, then Bowlbian attachment theory reveals a real concern with the well-being of children. What is an ideal environment for vulnerable, small children? Too often, mothers' behaviors are scapegoated; but at the same time, mothers clearly play a profound role in the well-being of their children. How can we reconcile concern for children with respect for mothers? Decades (centuries?) of anti-woman rhetoric might make this seem insoluble. But it is not that mothers must sacrifice all for the good of their child; it is, rather, that we need only remember that mother's and child's well-being are deeply intertwined, especially in the case of breastfed children. Evidence shows that "whether mothers work or stay at home, children are developmentally better off when the mothers' preferred status matches what she is actually

doing" (Sanger 480, see also Williams 2000, 200). Children are not well served by having stay-at-home mothers who want to be working, or by having working mothers who want to be home. Likewise, an infant is not well served by being breastfed by a mother who despises breastfeeding. Decisions based on the mother's self interest are not about the mother's interest alone, but also about what is best for her children. What this suggests is that mother's decisions about access, separation, and breastfeeding (or not) must be trusted. "Listening to mothers," says Sanger, "implicates notions of respect as well as fairness and expertise. Respecting the dignity of those subject to regulation seems an integral aspect of lawmaking in a democracy" (485). It is in this profound trust of mothers that we will find that elusive standard of what's "best" for mothers and for children.

Access and separation are compatible if we reject unified narratives about "good" motherhood, accepting a plurality of enactments of maternity and lactation. For some mothers, including, probably, those who enjoy the embodied experience of breastfeeding and dislike or have trouble pumping breast milk, separation from a breastfed child will be difficult—even traumatic. For others, including, probably, those who long for the flexibility enabled by pumping breast milk, separation from a breastfed child will be welcome. It is inappropriate for the political goal to be encouragement or subsidization of either of these groups, but rather to respect and enable maternal choice. In many senses, this is harder, because it requires listening to a wide range of mothers to understand what sorts of policies and regulations they require. It also suggests that a wide range of policies and regulations will be necessary. Some mothers will require pumping breaks at works, while others will need provision for having their child brought to them at work, or subsidization of on-site child care. Other mothers will require longer maternity leaves or decide to leave the workforce; to fulfill their capabilities, there should be

income support for caregiving (see Sanger 498). Outside of the context of paid work, breastfeeding mothers will experience life in different ways: some mother/baby pairs will require lactation rooms, but public space must also be designed in such a way as to allow breastfeeding in the open (see chapter 2). All mothers require good information: mothers who decide to feed formula need information about best practice of formula feeding and bottle preparation, mothers who pump and feed milk need information about safe milk storage and preparation and in how to combine bottle feeding with feeding at the breast, mothers who feed directly at the breast need information about best practice in successful breastfeeding. With a foundation of good information and supportive policies in place, women can exercise their capabilities as they see fit, and these decisions must be respected and trusted. It is in this sort of context that we will find the best outcomes for mothers, for children, and for uncoerced, loving, guilt-free infant feeding.

One final word about trusting mothers: trust of mothers must extend to how long their children continue to breastfeed. Of course, there are as many reasons to wean as there are mothers. But as far as political regulation and policy are concerned, a breastfeeding mother is a breastfeeding mother, whether her child is 3 weeks, 3 months, or 3 years old. Mother and child are the authority on when is the proper age to breastfeed. Too often, policies are written only to apply to infants who are breastfed. This notion relies on a variety of subjective assessments of the "appropriate age" of weaning. From a biological species standpoint, "an examination of the relationships between age at weaning and various life history variables among the nonhuman primates has revealed that, if humans weaned their offspring according to the primate pattern, without regard to cultural beliefs and customs, most children would be weaned somewhere between 2.5 and 7.0 years of age" (Dettwyler 2004: 719). This information should not be used to regulate mothers' feeding decisions, but sheds light on the vast range of what might be

considered biologically "normal." Of course, breastfeeding relationships change over time. Older children generally breastfeed less frequently and also eat food; working mothers of older children, for example, may need fewer pumping breaks. But mothers and children are the ones who must dictate the time of weaning. Few mothers practice extended breastfeeding in the United States (about 1 in 4 children are breastfeeding at 12 months, see figure 2 in appendix A); they should surely continue to merit protection by policies and regulations that enable breastfeeding.

My argument thus far has claimed that breastfeeding is a relationship that requires special considerations in policy and law, and that to achieve a society that supports women in their human capability of breastfeeding, we must enable maternal access to children, without interfering with maternal separation decisions. The implications of this argument are relatively straightforward with regard to routine mother-child separations, like separations related to work. It is much trickier when it comes to non-routine separations, such as maternal incarceration and custody battles over breastfed infants. In the next sections I examine these cases in detail, probing how maternal access functions in these difficult cases, and wondering what it means to foster the capability of breastfeeding for all women—rather than for just the normative, heterosexual, married mother.

Part 4: Parental Custody of Breastfed Children

While I have been focusing on maternal access to children, the focus on access might seem unnecessary; most mothers have access to their children most of the time. Most mothers need only worry about being separated from their children in the normal course of paid work, or, perhaps, something like jury duty. Other maternal separations, for most mothers, are voluntary: the mother decides to separate from the child for errands, exercise, a break from the tasks of

mothering. While this is true for most mothers, many other mothers suffer from more extreme separations from their children, and not always voluntarily.

Consider the case of custody battles for breastfed children. Should a breastfeeding relationship be considered as a factor in custody decisions? If so, for how long? Can a judge order a mother to stop breastfeeding to facilitate the father's relationship with the child? Do fathers have a right to access their breastfed child? Do mothers have a right to increased custody or breastfeeding-friendly visitation schedules? What *is* a breastfeeding-friendly visitation schedule? Can we reconcile the goal of gender equality in parenting with the special needs of a mother and breastfeeding child?

In this case, there are three actors whose capabilities must be considered and enabled: the mother, the father, and the child.[66] All of these actors have basic human capabilities at stake, including the capabilities of emotions and affiliation (Nussbaum 2000: 79). For the mother and child, the capabilities of bodily health and bodily integrity are also implicated (78). Each actor must be considered as an end rather than as a means to an end for the others, although the well-being and flourishing of each is intertwined in the way that the well-being of immediate family members generally are.

When a breastfeeding family dissolves, family members experience unique difficulties. If the child is a newborn, she or he needs to eat at least every two to three hours, twenty-four hours a day. Thus the baby and the mother have a physiological need for proximity: they must be

[66]I am using the heteronormative language "father" here for ease of reading, though it is worth noting that these principles apply in the same way to same-sex partners of breastfeeding mothers. For that matter, transgender men who breastfeed might face the same issues as do those who I am in this section calling "mothers." Exploring the intersection of these issues with other important trans and LGBT issues is outside of the scope of this chapter. The ALI Principles (see below) disallow consideration of sexual orientation of the parents in custody disputes (Ellman et al. 2010: 647).

together at these feeding times. The father might desire equal time with the baby, but how can the father get equal time with a breastfeeding baby? Indeed, "when two parents with theoretically equal claims to parent are in conflict, the time investment involved in breastfeeding, especially exclusively, may undermine the presumption of joint custody" (Baxter-Kauf 2012: 632). An older toddler who is still breastfeeding might not have any experience spending a night away from his mother, or falling asleep at night without breastfeeding, so the separation of the toddler and mother can be traumatic. Emery, Otto, and O'Donohue note that "we have had distraught mothers approach us in shock after being court-ordered to stop breastfeeding their infants to allow for smoother overnight visits" (2005: 11).

Standards governing custody decisions have changed dramatically over time. The majority of custody decisions are reached amicably by the parents, but disagreements are taken to the courts. English law was historically dictated by a paternal preference rule. Ellman et al. (2010) cite the case of *Rex v. DeManneville* (1804), in which "the court ordered an eight-month-old nursing infant removed from the mother and returned to the father, despite the mother's uncontested allegations that the parental separation was due to the father's extreme cruelty" (623-4). In the United States, the "tender years doctrine" ruled for much of the 19th and into the 20th centuries. The tender years doctrine dictated that the mother (and her tender care-giving ability) was the appropriate guardian for young children of tender years. In most states today, custody decisions are made using the "best interest of the child standard." Some states codify in statutory frameworks what factors shall be considered in determinations of the best interest of the child. The best interest of the child standard is imprecise: it requires guesswork by a judge who does not have full knowledge, and the judge's guesswork is made even more imprecise by his or her unconscious gender assumptions and biases. Today, the best interest of the child is often

interpreted as joint custody between a mother and father. "This approach to custody…reflects an underlying policy of encouraging both parents to maintain post-divorce relationships with the child" (Ellman et al. 2010: 671).

Encouraging post-divorce relationships with both parents is certainly an admirable goal. But some feminists are concerned that it has inequitable effects. If a woman has chosen to be a stay-at-home mother and prioritized unpaid care-giving over a career, or if she is breastfeeding, a half-time loss of her children may be more traumatic than that loss would be for a father who was always working or often traveling. Mothers are often penalized in custody decisions for not spending enough time at home (because they are single working mothers), or because they don't make enough money (since mothers generally make much less money than fathers); gender should not affect custody decisions in this way (see *Burchard v. Garay* 1986),[67] but may unconsciously enter into calculations of "best interest." After all, determinations of "best interest" are inevitably value laden and ideological. Some feminists counter that a better standard is a "primary caretaker preference," in which a presumption for custody is given to the parent who was the primary caregiver (usually the mother), or an "approximation of past parental roles" standard in accordance with the ALI Standard (Ellman et al. 2010: 684-9). The ALI Standard dictates that custody should be allocated so that "the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions prior to the parents' separation" (687). These alternatives to the best interest of the child standard attempt to create a post-divorce environment that is as close a representation as possible to the child's experience before the divorce, creating stability and protecting the relationships the child already has with each parent.

[67] Burchard v. Garay, 42 Cal.3d 531 (1986).

It is important to note that the best interest of the child standard is philosophically opposed to the capabilities approach: it demands that the interests of the mother and father are ignored and only the interests of the child are considered. The interests of the parents affect the determination of best interest only if the parent's interest is directly related to the child's interest: so a child has an interest in having a relationship with his or her parent, but the parent's interest in having a relationship with the child is irrelevant insofar as it is important to the well-being and flourishing of the parent. Thus, the Minnesota Statutes direct that "the wishes of the child's parent or parents as to custody" are one of the factors in determining the best interests of the child (Ellman et al. 2010: 630). The capabilities approach, on the other hand, because it is a broader framework to guide justice rather than a narrow legal standard to decide custody, insists that the capabilities of each person are considered and respected. Imagine a case in which a mother has sacrificed career and income for her children, and for whom 50/50 custody would be a traumatic separation: the capabilities approach insists that we consider the mother's flourishing, not just on the well-being of the child.

Breastfeeding fits into these legal frameworks uneasily. Over time, as breastfeeding prevalence and duration have increased, and custody arrangements are more often sought between parents of infants, breastfeeding has become a more common factor in custody disputes. In general, "many courts treat breastfeeding as a triviality in which the mother may engage as long as it does not interfere with the court's order" (Hofheimer 1998: 456). But breastfeeding is not a triviality, especially when "mothers are often faced with custody and visitation orders that do not allow them to continue to breastfeed their children" (Hofheimer 1998: 434). Judges, presumably, do not understand that certain custody orders make breastfeeding virtually impossible, because judges generally suffer from a lack of understanding of the physiology of

breastfeeding. Without an understanding of the physiology of breastfeeding, judges cannot make proper assessments of the special needs of breastfeeding mothers and children. One judge, in

> An extreme example of misunderstanding…order[ed] three day visits every other weekend for a three-month-old breastfed baby, [and] told the father to buy breast milk in his state. The only place one can get breast milk (besides a lactating woman) is a milk bank; only thirty such banks exist in the United States. This breast milk is available for rare instances in which a baby cannot survive without breast milk and the baby's mother cannot breastfeed….It is not available to facilitate lengthy visitations for breastfed infants. (Hofheimer 1998: 458)

Judges routinely order custody and visitation arrangements that effectively order the mother to stop breastfeeding, even if they don't (often) actually order the mother to stop breastfeeding.

Mothers, when they push back against custody and visitation orders that are unfriendly to the breastfeeding relationship, are often accused by fathers of using breastfeeding as a weapon to deny the father's access, an argument that often resonates with judges (Kelly 2009: 133).

> Such cases require the courts to assess a father's equal entitlement to custody in situations where that entitlement imposes upon a child's breastfeeding relationship with his or her mother. In such a situation, the court must balance the benefits of the breastfeeding relationship to the child, the impact of alternatives such as pumping, as well as the father's equal entitlement to custody or access. (Kelly 2009: 138)

Judges and fathers tend to get less willing to accommodate breastfeeding the older the child gets. Breastfeeding toddlers represent, therefore, an especially difficult case. In *Cavannah v. Johne* 2008,[68] a judge commended the father on his "patience" in dealing with the mother's "desire to breastfeed,"[69] telling the mother that "the time has come" for her to stop prioritizing breastfeeding over the father's access (Kelly 2009: 137-8).

What about pumping? Earlier in this chapter, I argued that pumping is not a valid replacement for a mother's access to her breastfed child. In custody cases, this issue becomes

[68] Cavannah v. Johne, [2008] O.J. No. 5027 (S.C.J.) (Canada).

[69] Compare with discussion on the perception of breastfeeding as "voluntary" on page 67.

primary. Momjian (1994) asks, “Can a parent be directed to purchase an electric or battery-operated breast pump to facilitate exchanges in custody or visitation?” (136). As argued earlier in this chapter, some women are unable to pump milk for long periods of time to keep up their milk production at the level of the child’s needs. Judges and fathers overestimate the extent to which pumping can replace maternal access. Kelly (2009) argues, “While breast pumps and bottle-feeding are frequently touted by fathers and judges as an alternative to the breast, they are often unsatisfactory solutions….So while the pump and bottle might be an alternative for older children and mothers for whom pumping has no effect on milk supply and who are willing to forgo the bonding that accompanies breastfeeding, it is not a viable option for all mothers” (144). While pumping might be a reasonable solution for some children, it cannot be presumed to be a one-size-fits-all solution. Depriving mothers and their breastfed children of access to each other is, often, a directive to stop breastfeeding.

Another issue is that judges do not hesitate to tell mothers that they should (or must) wean to facilitate the visitation schedule. Baxter-Kauf (2012) points out that “a large portion of the dispute in the case law concerns the proper age at which a court should no longer defer to a breastfeeding mother as the proper arbiter of the appropriate age for weaning….The general court consensus is that a court may decide not to take breastfeeding into an account at one year” (648, 649). The question of court-led weaning represents the judge’s perception of the clash between the needs of breastfeeding and the needs of the father to have access to his child. By what cultural standard are judges justifying their declarations that “the time has come”? As I argue above, weaning is a matter for a mother and child and, if instigated by mother or child, is reasonable at any time. But declared by a court? Kelly observes, “That a judge was willing to actually order that a mother cease breastfeeding, rather than ask her to accommodate the access

arrangement via pumping or nursing only when the child was in her care, is revealing of a complete lack of understanding around extended breastfeeding" (2009: 150). "Judges should be discouraged," Kelly argues, "if not prohibited, from ordering that breastfeeding cease" (152).

But prohibiting that judges order that breastfeeding cease is not to say that custody must always go to a breastfeeding mother, for as long as she and her child continue to breastfeed. The father's human capability of having a relationship with his child is important, and any reasonable solution must take his needs into account as well. The breastfeeding relationship changes over time. Whereas a newborn nurses as many as 18 times per day, an older toddler nurses less often, has developed other self-soothing mechanisms, and can connect with a non-custodial parent in deeper ways. Hofheimer argues convincingly that "a better approach would be to determine a pivotal date when the child is between twelve and thirty months old and the balance of interests between breastfeeding and paternal custody might change" (1998: 462). Under Hofheimer's balance of interest standard, we can assume that breastfeeding will never be forcibly stopped (by dictate or effect of policies), but will become less important to the custody and visitation guidelines over time. What this will look like in each case will depend on the context of the breastfed child under consideration.

With this background in place, we can explore different options for accommodating the breastfeeding relationship during custody proceedings. We cannot trust the judges to consider breastfeeding on their own, as we have seen. One fairly straightforward option is to specifically add breastfeeding status as one of the factors for consideration in determining the best interest of the child. Courts in Maine since 2005, in determining which custody arrangement is in the best interest of the child, must consider "If the child is under one year of age, whether the child is being breast-fed" (Maine Revised Statutes Title 19-A §1653(3)(P)).

Visitation guidelines can also be structured to facilitate breastfeeding. Kelly argues that while "independent access of a non-resident father to a breastfed child can pose significant challenges," "access could take place within the mother's home" (144, 152). Pumped breast milk can be used when indicated, and older babies and toddlers who nurse on a schedule can have access arranged around their breastfeeding schedule (Kelly 2009: 152). Likewise, Baldwin, Friedman, and Harvey (1997) lay out specific guidelines for how to take breastfeeding into account in a successful way, including that "visits should not exceed the amount of time away from the mother to which the child is accustomed or has worked up to," that "the younger the baby, the more important it is to have frequent, rather than lengthy, contacts with the father," and that "visitation should gradually increase every month or two, but overnights should not begin until the child has become accustomed to one or two full-day stays" (76).

The Indiana Rules of Court "Indiana Parenting Time Guidelines" (2013) function by effectively instituting Baldwin, Friedman, and Harvey's guidelines for all children (not just those who are breastfeeding). The Indiana guidelines "are based on the premise that it is usually in the child's best interest to have frequent, meaningful and continuing contact with each parent," but that "infants (under 18 months) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary care giver who provides a sense of security, nurturing, and predictability. It is thought best if scheduled parenting time in infancy be minimally disruptive to the infant's schedule" (1, 10). Thus, the guidelines provide for the secondary care giver to have the child from birth to four months in the following manner: three non-consecutive days per week of two hours in length, three hours on every scheduled holiday, and overnight if they have exercised regular care responsibilities for the child, but not to exceed one 24-hour period per week. The guidelines work up incrementally, up to, at age 19 months through 36

months: alternate weekends on Saturdays for ten hours and on Sundays for ten hours, one day preferably in mid-week for three hours, all scheduled holidays for ten hours, and, if the parent has been following the guidelines for nine months, for alternating weekends from Friday at 6 p.m. until Sunday at 6 p.m. (Indiana Rules of Court, 11-12). In this way, the Indiana guidelines facilitate breastfeeding without ever mentioning breastfeeding, applying the guidelines equally to all children. The guidelines specifically note that they are designed to allow the child to have contact with the non-custodial parent while ensuring that the child "is able to regularly go back and forth, and particularly wake up in a different place, without development-retarding strain" (12). Guidelines such as these attempt to remain attentive to the capabilities of all involved (mother, father, child), in an admirable way.

Are these methods of accommodating breastfeeding harmful to the cause of gender equality? There is a concern that making allowances for breastfeeding mothers to have increased access to their babies is a return to the tender years presumption of custody law yesteryear. Baxter-Kauf worries that judicial decision-making that privileges the access of breastfeeding mothers is based on assumptions of the tender years doctrine because it "reinforces the notion that woman are the appropriate caregivers for infants and children who are nursing, and ties that appropriate caregiving relationship to biology and maternal instinct" (2012: 645). Thus, she argues:

> The desire to eliminate tender years justifications collides with scientific evidence of the superiority of exclusive breastfeeding as the normal and optimal food for infants for a least 6 months, and AAP recommendations that weaning should be natural, child-led, and not attempted until desired by both mother and child. Judges should be apprised of current research and findings into the benefits. (660)

But is that the only conclusion? That the desire to move away from tender years presumptions in the pursuit of gender equality is inherently opposed to biological best breastfeeding practice? A depressing conclusion. But maybe this isn't about tender years presumptions at all, but rather

about considering the actual needs and capabilities of each actor involved. Tying breastfeeding to maternal biology is not oppressive, it's fact. It's part of the factual relationship that exists when a woman and child have this unique relationship. That unique—and, yes, biological, physiological—relationship brings with it special needs. It is in seriously considering these capabilities and needs—of mother, father, and child—that we can move away from talk of "equality" as a mathematical equivalence and move toward talk of justice and of human flourishing.

So what legal standard is best positioned to protect the capabilities of the mother, the father, and the child, and to take into account the special needs of breastfeeding mothers and children? The ALI Standard, which bases custody on the approximation of past parental roles, is the most appropriate standard. The ALI Standard avoids gender problems associated with designating one parent as the "primary caregiver," since it recommends assigning custody based on the proportion of time each parent previously spent with the child while still protecting the ability of the child to have a relationship with each parent. It takes into account the capabilities of each parent to maintain a meaningful relationship with their child, even if their actual proportion of caregiving time was very low (that is, it won't let a parent's time fall below a certain level). At the same time, it protects a parent who has been the primary caregiver by continuing the stability of her or his relationship with the child. Parents who have shared caregiving relatively equally are protected by continuing their relationship. The child benefits from as much stability in the face of divorce that is possible, and from the protection of their relationship with each parent. A breastfeeding mother who desires or needs to nurse her baby directly rather than pumping will automatically receive a larger proportion of time with the child, because that time she devoted to

breastfeeding will be accounted for.[70] It is important that the ALI Standard's dictate to split custody based on an approximation of past parental roles is combined with custody schedule and visitation guidelines that accommodate breastfeeding. A breastfeeding mother who is granted 70% time with her child will still need a guarantee that the father's 30% time isn't taken all at once, because such an arrangement would impede breastfeeding. Visitation guidelines such as the Indiana guidelines can fit in well with the ALI Standard as best practice for protecting the interests of a parent who has had minimal contact with the child but still warrants protection of his or her relationship through visitation. A father who has had a history of more engagement with the child, for example, merits more than the Indiana guidelines lay out (the Indiana guidelines indicate this explicitly: "When a very young child is accustomed to receiving regular, hands-on care from both parents, the child should continue to receive this care when the parents separate" (Indiana Rules of Court 2013, 11). This scheme protects maternal access to the breastfed child while respecting the varying capabilities of all actors.

Under this scheme, it is important to note that it is inappropriate for judges to prescribe breast pumping or to impose a weaning date. The ALI Standard requires respecting the past parental roles, of which breastfeeding is one. Custody proceedings are not the time to dictate a change to the breastfeeding relationship. This reflects a belief that the parents' past roles reflect what is best for the child and the parents: "the law can look to these family patterns as the best reflection of the parents' true preferences and the best predictor of future stability of custody arrangements" (Scott 1992: 637). The past breastfeeding relationship, likewise, should be respected. If the mother has been unable to or has not wanted to pump, this is not a time to

[70]A mother who is apart from her child and pumping not because of her own desires but only because of unjust social realities will only be protected through the ALI Standard if other unjust realities are corrected. I argue for this elsewhere, but the ALI Standard itself won't protect her.

dictate otherwise. If the mother and child have not and do not want to wean, this is not a time to dictate otherwise. To do so would not further the actors' capabilities, while it would run afoul of them.

Like with the case of incarceration, it is worth noting that the custody arrangements that respect maternal access to breastfed children may be what is best for all children, even those who are not breastfed. In the scheme that I advocate for here, babies who are accustomed to maternal care but who are not breastfed can easily receive as much time with their mother as a breastfed child. The Indiana Guidelines effectively accommodate a breastfeeding relationship without ever referencing breastfeeding, the assumption being that stability of relationships with caregivers is important for young children. I would only add that breastfeeding will be important for custody determinations insofar as a mother and father pair who, besides feeding, have an equitable split of parenting tasks will not receive equal access to the child at first—because the breastfeeding relationship requires more access to the mother. But as the child gets older and the importance of breastfeeding fades, the child's time with each parent can reflect the equitable distribution of parent roles. For a child that is not breastfed and whose parents have an equitable split of parenting tasks, parenting time will be equal from a younger age.

Part 5: Incarcerated Mothers and Access to Children

Finally, consider the case of a mother who is under correctional control. She is, in some sense, responsible for the separation from her child, insofar as she committed a crime. But her separation is hardly voluntary. Her sentence is, on its face, about penalty for wrongdoing. But for a convicted mother, the sentence has profound effects on her relationship with her children, on

her maternity itself. For a pregnant or breastfeeding mother, incarceration amounts to a loss of the ability to decide to breastfeed, and a loss of access to her children.[71]

How should a capabilities approach operate with regard to incarcerated mothers? Have criminals somehow forfeited their claim to their fundamental human capabilities? The mainstream model presupposes that criminals have forfeited, at minimum, their ability to enjoy the capabilities of being able to move freely from place to place and control over one's environment—but what of the other capabilities, including the capability of reproductive choice? While criminal conviction allows loss of freedoms, it does not justify indiscriminate regulation; permissible prison regulations must be "reasonably related to legitimate penological interests" (*Turner v. Safley*).[72] Reproductive choice is not generally thought to be forfeited by a criminal's conviction; it is unjust to, for example, sterilize criminals as a form of punishment.[73]

Nussbaum (2004a) argues that the criminal justice system is one of the "institutions bear[ing] the burden of supporting the capabilities of the nation's citizens" (15). Expanding on this, I argue that the capabilities approach to human dignity and well-being requires that the criminal justice system is oriented within a rehabilitative paradigm—that is, a criminal justice system that is based solely on punishment fails to respect the capabilities of offenders. There is

[71]In my argument, I am not considering cases in which the mother has engaged in abuse of her children of the sort that would result in her children being taken into custody of child protective services.

[72] Turner v. Safley, 482 U.S. 78 (1987) at 89. "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."

[73] In 2014, the California state legislature unanimously passed S.B. 1135, prohibiting forced sterilization of inmates—a practice that occurred as late as 2010. A similar legal fight has occurred over prisoners' access to abortions. Courts that have considered the issue agree that that incarcerated women legally have the right to abortions under the *Turner* standard, but in practice incarcerated women are systematically deprived access to non-therapeutic abortions. See Kasdan 2009, Bloom et al. 2002, 40-2.

some literature establishing the applicability of the capabilities approach to corrections settings. Tony Ward (2002) advocates the "good lives model of offender rehabilitation"—this model constitutes a rehabilitative approach grounded in respect for human well-being. Ward's work cites the applicability of Nussbaum's capabilities approach to offenders (Ward and Maruna 2007).[74]

> By focusing on providing offenders with the necessary conditions (e.g. skills, values, opportunities, social supports, etc.) for meeting their needs in more adaptive ways, the assumption is that they will be less likely to harm themselves and others. In this model, the primary end goal is not the reduction of crime, although it is argued that this will reliably follow from individual well being. We suggest that…effective rehabilitation ultimately requires articulating a view of human well being. (Ward and Stewart 2003, 126)

Data on recidivism also supports the argument for respecting the capabilities of offenders—offenders are less likely to be recommitted if they are able to retain ties to their communities and families, and if they are given the rehabilitative treatment they need (Bloom et al. 2002: 69). It is good theory and good practice to situate the treatment of criminals within a capabilities framework, even if legitimate penological objectives necessitate the loss of some capabilities like freedom of movement.

The number of women under correctional control has increased dramatically in the past decades; even as women's criminality has remained stable, the number of women in prison increased by 646% between 1980 and 2010 (Bloom 2003: 3). This increase is due, in large part, to the war on drugs. Most women are arrested and incarcerated for property and drug crimes, while violent crime among women has decreased (Bloom 2003: 3). More than 40% of women

[74] Similarly, Erik Claes (2005) argues that capabilities apply to suspects and offenders as well as to victims, proposing a "generalist face of respect for human dignity" (47). Faulkner and Burnett (2012) situate criminal justice within philosophies of social justice, linking the capabilities approach to the criminal justice literature: they propose "a shift of emphasis from the 'criminal justice system' to community, relationships, capabilities and positive motivation as the means of preventing and reducing crime" (10).

offenders have been victims of physical or sexual abuse, and 80% have substance abuse problems (Bloom et al. 2002: vii). One in four have been diagnosed with a mental illness, 75% of whom have a co-occurring substance abuse disorder; "a total of 22.3 percent of women in jail have been diagnosed with PTSD" (Bloom et al. 2002: 16). Most of the women under correctional control—70%—are mothers of minor children (Bloom et al. 2002: vi). Nearly a quarter of the children with an incarcerated parent are age four or younger (Greene and Allard 2014: 2). Most incarcerated mothers were, prior to conviction, single mothers with sole custody of, on average, two children. Further, it is estimated that 4-9% of women are pregnant at the time of incarceration (Bloom et al. 2002: 68). Around 10,000 babies are born in prison each year in the United States. Barbara Bloom argues that

> Separation from children is considered to be among the most damaging aspects of imprisonment for women. The difficulties of separation are exacerbated by a lack of contact. In some cases, the forced separation between parent and child results in permanent termination of the parent-child relationship. (2003: 11)

More than half of mothers are never visited by their children during their period of incarceration, mostly because of logistical difficulties and the long distances to women's prisons (Bloom et al. 2002: 17). Moreover, incarcerated mothers face the constant worry of losing their children permanently. For children in the foster care system, the Adoption and Safe Families Act of 1997 provides for termination of parental rights once a child has been in foster care for 15 or more of the past 22 months; incarcerated mothers serve an average of 18 months (Bloom et al. 2002: 77). Even mothers with children under the care of family members (usually the maternal grandmother) must face legal requirements for reunification—housing, economic support, medical services, and more—that are nearly impossible to meet (Bloom and Steinhart 1993: 43).

Evidence shows, too, that some judges attempt to protect fetal health by incarcerating pregnant substance abusers who would not otherwise serve time in prison, in effect doling out

harsher penalties than average for pregnant women (Hora and Becker 1996). Surveys of judges indicate that they may give these harsher sentences precisely because there are so few community-based substance abuse treatment options (4). This practice, however, is not legally or medically sound. From the legal side, it infringes on the constitutional rights of the mothers. "Constitutional principles of equal protection and due process, privacy and bodily integrity, as well as Eighth Amendment issues, restrict a judge's options when faced with a pregnant, drug-using criminal defendant" (Hora and Becker 1996: 8). Medically, it is not indicated because women often get better treatment in the community, and because increased criminalization has the unintended consequence of keeping substance abusing pregnant women who are not incarcerated from seeking necessary medical treatment (50). These punitive measures for pregnant women having lasting implications for mother-child access after birth, and for the possibility of mothers being able to decide to breastfeed (and methadone treatment does not contraindicate breastfeeding) (LactMed).[75]

Breastfeeding is generally impossible for women under correctional control. Lactation could, theoretically, be compatible with incarceration in a few different ways.[76] Some women might give birth shortly before they are due for release, in which case they may be interested in maintaining lactation through a pumping regimen (possibly dumping the milk) so that they can breastfeed their child upon release. Other women might be interested in pumping milk for transport to their babies, which would require a prison infrastructure to support the safe storage

[75]It is also worth nothing in this context that some states are in the process of specifically criminalizing drug use during pregnancy even though experts agree that this is bad public health policy because it will discourage drug abusing pregnant women from seeking prenatal care and medical treatment. (For example, see Tennessee S.B. 1391, 108th Congress, 2014.)

[76]It is probable that as more women give birth in Baby-Friendly Hospitals, the number of female inmates interested in breastfeeding will increase.

and transportation of milk. Other women might be interested in keeping lactation going so as to feed their babies during visitation. To accommodate breastfeeding inmates, prisons would have to have clear policies on how breast pumps are to be treated: are manual pumps different than electric? Would pumps have to be kept in a secure area? How are the logistics of milk storage addressed?

In fact, the vast majority of incarcerated women do not have any of these options; in most prisons breast pumps are regarded as "security violations" and are confiscated, even for mothers who are only trying to maintain lactation through pumping and discarding their milk (ACLU of Nevada). Incarcerated pregnant women are generally allowed to remain with the baby until released from the hospital, at which point the baby is released to its guardian and the mother returns to prison. Prison administrators exhibit reluctance toward dealing with lactation; they are concerned that the prison would be held liable in cases of mastitis; that the prison would be responsible for the safety and sanitation of the milk; that ethical issues would arise over the storage of milk and on the sale of unused milk; that there would be a contraband market for breast milk, especially for milk from those mothers who were being weaned from methadone; that the pump would be used for sexual gratification by non-lactating inmates; that there is a lack of privacy in which to pump; that any special privileges granted to lactating inmates (such as a private room or breaks for pumping) could been seen as coercing inmates to breastfeed; that the family caring for the child may not permit contact with the mother or condone the ongoing breastfeeding relationship. These concerns are (mostly) logistical, but they point to a prison system that was designed for male inmates and then applied, after the fact, to women offenders. The fact that female inmates have a different set of needs, life circumstances, biology, and family responsibilities is seen by prisons as irrelevant.

Some programs, like Breastfeeding Behind Bars supported by the New Mexico Breastfeeding Task Force, are fighting difficult battles to secure access to breast pumping and milk storage for incarcerated mothers (Ellis and Knudsen 2014). The group has been working for years to secure access to pumping for incarcerated mothers at the Metropolitan Detention Center in Albuquerque; it is slated to go into effect in the next months. The program integrates with a program for incarcerated pregnant women with substance abuse problems, the Milagro Program at the UNM Hospital. Nurses in the Milagro Program and lactation nurses at the hospital provide inmates with information about the pumping program. When she returns to the jail after her hospital birth, the woman has a choice to stay in the medical wing for two weeks with access to a hospital grade electric pump; some inmates view the medical wing as a privilege and some view it as a punishment, so the program administrators expect that only some women will be interested in taking advantage of this arrangement. When they return to their regular cell, they can pump as often as they like (and will be encouraged to do so at least eight times per day) with a manual pump donated by the university hospital. The milk will be placed in locking freezers and picked up by a community organization that serves families of inmates, Wings for Life International. The milk will then be stored in the Wings for Life offices, where the caregivers of the infants can come to pick up the milk. Ultimately, the plan includes a pumping circle for the mothers involved which will offer them education and information. Eligibility in the program is limited to women who were in the Milagro program who have been in compliance with their rules and who screen drug free. Women in the program who are on medications like Methadone are eligible.

The experience of the pumping program at the Metropolitan Detention Center in New Mexico highlights that prisons are highly institutional and were not designed to meet the diverse

and varying needs of women, like lactation. It is logistically difficult to accommodate lactation within an existing institutional incarceration scheme. Even after years of fighting, the program is not yet in effect, though with luck, it will be soon.

Institutional support for breastfeeding is, in some ways, even more urgent in local jails. Jails have a higher proportion of pregnant offenders, and most have specific regulations for pregnancy-related medical issues (Markham 2011). Micaela Cadena, the policy director for Young Women United, argues that "pregnant or lactating women should be in their communities, not in jail awaiting their plea bargains or hearings. 'One of the concerns that we have is if somebody's locked up for a few days, takes a couple days to post bail or bond and may be a breastfeeding mother, in that time span her milk may have dried up, and she may have lost her milk supply'" (Demarco 2014). Jails have the burden of dealing with mothers who are under correctional control for short periods, and for whom that time is critical in maintaining their milk supply.

The situation, then, for mothers under correctional control is that they are systematically deprived of access to their children, their families are torn apart, and they are not allowed to breastfeed. These mothers are struggling with drug addiction, poverty, and many are survivors of abuse. What these women and children need is not incarceration, but comprehensive support in all facets of life to prevent their coming under correctional control:

> We need to create a community response to the issues that impact women's lives and increase their risk of incarceration. Basic needs that, if unmet, put women at risk for criminal justice involvement: housing, physical and psychological safety, education, job training and opportunities, community-based substance-abuse treatment, economic support, positive female role models, and a community response to violence against women. The greatest needs are for multifaceted drug abuse and trauma recovery treatment and for education and training in job and parenting skills. (Bloom 2003: 13-14)

Instead of getting the treatment and opportunities they need—particularly job training and drug abuse and trauma recovery treatment—they are robbed of access to and relationships with their

children, making them ever more vulnerable to continued criminality and drug abuse. “Research demonstrates that both male and female offenders who maintain ties to their families and communities during incarceration are less likely to recidivate” (Bloom et al. 2002: 69). The correctional treatment of incarcerated mothers continues a cycle of victimization of vulnerable women.

So if these mothers pose no threat to their communities, and if the logical place for them is in drug abuse and trauma recovery treatment, why are we separating these mothers from their children, in many cases terminating their parental rights? One explanation is that regulation of maternal separation has historically been driven by normative ideas of “proper” motherhood. There is a notion that we cannot give a break to “bad mothers.” People assume that children should be separated from a parent who has engaged in criminal activity, particularly drug use. Myrna Raeder, though, argues that “a parent who commits a criminal act may still have substantial and responsible relationship with a child” (2001, 253). An official from the New Mexico Breastfeeding Task Force reports that the group advocating for breast pumps in New Mexico prisons passed up the opportunity for media coverage because of a concern that they “would attract community push back for providing some sort of leniency for women criminals.” Raeder notes that “obviously, mothers who are substance abusers make unreliable parents, but even then children are not usually benefitted by their mother’s incarceration if she is suitable for supervision and drug treatment in the community” (Raeder 2001: 253). Elsewhere, she argues:

> There is a Pollyanna view that children have better alternatives than being with their “bad” parent. But neither adoption nor foster care is a panacea. It would be naive to think that being shuttled among strangers is always preferable to remaining with their family. Numerous surveys reveal astoundingly high incidences of abuse or neglect within foster care. In addition, multiple placements and failure to adequately provide for the child’s needs are widespread problems in the foster care system. Exposure to physical and sexual abuse may put children in greater jeopardy than staying with a parent who is obtaining supervised treatment. (Raeder 2003: 185)

It is imperative, then, that we question the logic behind claims of what is in the "best interest" of incarcerated families. Women offenders who are mothers necessarily defy norms of "good motherhood." But defying norms of good motherhood is not itself justification for separating those women from their children. Decisions to separate mothers from their children must be based on something more.

Furthermore, if a given case raises concerns about the ability of a mother to provide good care to her children, we must ask why, rather than end the conversation with incarceration. Is it because she does not have access to good drug rehabilitation services or because she is unable to get a job? We must work to provide the services that will allow her to succeed, to mother. Otherwise, women are being asked to navigate impossible situations—and when they, unsurprisingly, fail, they are told it is an individual failing of a "bad" mother, and are separated from their children. This system—lack of support for vulnerable mothers, criminalization of drug use, lack of rehabilitation services, incarceration and separation from children—does not respect each individual as the capabilities approach requires. The capabilities approach requires that each individual is treated as an end—that each person, criminal record or not, drug addicted or not, has the opportunity to flourish in his or her life as far as is possible, to live a life worthy of human dignity and well-being. If a society does not provide these capabilities, it is guilty of a serious breach of justice (Nussbaum 2000: 55, 2003: 40).

So how can society give a woman offender, who is most likely dealing with a history of drug addiction, mental health disorders, and physical or sexual abuse, "the preconditions of a life worthy of human dignity"? (Nussbaum 2011: 73). The answer, almost universally advocated by those who study gender and the criminal justice system, is alternative sentencing, or community-based corrections. These programs provide close supervision for the mother and child in a

community-based residential setting, saving money and reducing recidivism. As we've seen, most women's crimes are drug- or property-related, leaving many women good candidates for these programs. "Female offenders are frequently good candidates for community-based corrections. The least restrictive alternative to incarceration should be considered for the female offender" (Bloom 2003: 17). The American College of Obstetricians and Gynecologists committee opinion argues that

> It is important to avoid separating the mother from the infant. Prison nurseries or alternative sentencing of women to community-based noninstitutional settings should be considered for women during the postpartum period…Given the benefits of breastfeeding to both the mother and the infant,…accommodations should be made for freezing, storing, and transporting the milk. This can be difficult to facilitate and is another argument for prison nurseries or alternative sentencing of women to community-based noninstitutional settings. (ACOG 2013)

Community-based corrections allows offending women to maintain contact with their families, to breastfeed their babies with no trouble, and to receive substance abuse and trauma recovery treatment, as well as training in parenting and life-skills classes that will allow them to succeed during reintegration.

Community-based corrections is not appropriate for all offenders; in most existing programs, women are ineligible if they have a history of violent crime or crime against children. Programs designed specifically for pregnant women and new mothers sometimes have age limits: women can live in the supervised home with their child until the child turns one- or two-years-old. Community corrections is also a reasonable choice for battered women who are convicted survivors; convicted survivors, including those who are homicide offenders, are the

least likely of all felons to repeat their crimes and are generally viewed as model prisoners (Leonard 2003: 131).[77]

It is also possible, alternately, to maintain maternal access to young children through prison nursery programs. Evidence gathered from existing and historical prison nurseries demonstrates that the children have no ill effects as a result of their stay in prison, their mothers boast lower recidivism, and the majority of prison nursery infants tested as "securely attached" to their mother when tested with the Strange Situation Procedure (Byrne 2014; Goshin et al. 2014). In fact, "infant development was threatened by infant insecure behaviors if transitioned to alternate caregiver in the community. DOCS initiated separations from mother produced setbacks in infant self-regulatory behaviors" (Byrne 2014). Infants of all ages in prison nursery programs, however, met developmental, mental, and motor milestones (Byrne 2014). Retaining access to children is also beneficial to the flourishing of the mother; evidence shows that "stress associated with limited contact with children was related to higher levels of anxiety, depression, and somatization…as well as increased institutional misconduct. Incarcerated women experience considerable distress related to parenting, manifest in psychological and behavioral adjustment" (Houck and Loper 2002: 548).

Prison nursery programs are not new; historical records exist of American prison nurseries at least to the early 19th century (Craig 2009: 49S). They were often unregulated; babies stayed with their mothers as a matter of course. Over time, more regulation tracked their presence in institutional settings. After age limits for infants in prison nurseries were revised downward, mothers who participated in programs with infant age limits were often severely

[77]Gendered pathways to criminality render supposedly "gender-neutral" guidelines to assessing offender risk (in terms of risk to community and risk of recidivism) incorrect when applied to female populations. (Reisig et al. 2003; Hannah-Moffat and Shaw 2003)

distressed when their babies reached the maximum age for the program and were removed. In 1963, Elizabeth Gurley Flynn, a labor organizer and communist who served time in a federal prison, observed:

> The parting of a mother and child, especially if she faced a long sentence, was heartrending. The grief and worry of these poor women affected their health and spirits, sometimes to the point of collapse. Certainly, in these cases there should be some special provisions, especially for first time offenders, to keep the mother and baby together. (Flynn 1963: 89)

Over time, though, the prevalence of prison nursery programs decreased. Reformers interested in the welfare of the children declared that prison was no place for children (Craig 2009: 45S). In-prison programs "allow female inmates to keep their children with them in special prison wards, but generally maintain the traditional structure of incarceration…[and] effectively imprison the children" (Developments in the Law 1998: 1932). In a desire not to submit infants to institutionalization, most mothers and children, instead, were separated. Some long-running facilities, like the prison nursery program at Bedford Hills in New York State, have been successful (and widely cited), but unable to serve the vast majority of mothers under correctional control.

Most reformers today advocate for community-based corrections for mothers and babies, rather than prison nursery programs, but it is worth noting that good evidence exists for both models of keeping mothers and babies together. It is likely that community-based alternatives are in a better position to offer women offenders the wraparound services that they require: trauma-informed programs addressing poverty, abuse, drug addiction (Bloom 2003: 17). A new program in Delaware, New Expectations, serves as alternative sentencing option for pregnant female offenders with a history of drug abuse (Burke and Rini 2015). "The goal here is long-term recovery," said the director of re-entry services. "We hope with preparation and support that

she'll stay out of prison the rest of her life" (Burke and Rini 2015). One pregnant woman enrolled in the program reports:

> They were going to give me Level 3 probation, but I knew if I did that I'd just mess up again. When you're on drugs it's really hard to know your priorities. This will be a new start away from the people that I was with before, and a chance to be around other girls who also want to be clean. (Burke and Rini 2015)

New Expectations explicitly allows women to breastfeed, if they decide to. They counsel the women on breastfeeding safely, noting that breastfeeding is safe for a mother on methadone treatment. The program is available to women until their child is six months old. A similar program in North Carolina, Horizons, provides residential substance abuse treatment to pregnant women and mothers. Run by the Department of Obstetrics and Gynecology at UNC Hospitals, the program differs from New Expectations only in that it does not serve as an alternative to correctional control (even though all women in Horizons have broken the law). At Horizons, women get education, gain employment, learn parenting and life skills, all while receiving free childcare at a 5-star facility (Horizons 2015). Programs like these are necessary for these women and their children to achieve flourishing. A society that, instead, incarcerates women and separates families is failing basic tenets of justice, preventing women and families from reaching basic human capabilities.

Some contend that alternative sentencing like community-based corrections amounts to reverse gender discrimination: unequal and preferential treatment of female prisoners. But real gender differences necessitate gender-responsive sentencing and programs. The goal of the criminal justice system, Raeder argues, “should not merely be to mete out equal sentences to females [and to male offenders], but rather to guarantee that they receive just sentences which reflect their dissimilar patterns of criminality and family responsibilities” (2003: 189). Indeed, many argue that the current system is, in fact, gender-responsive—only it is gender-responsive in

favor of male offenders. “It is ironic, that while women have traditionally been placed in a prison system based on a male model for facilities, programs, and services, providing them with gender-responsive programming is viewed by some as inappropriate from an equal protection perspective” (Raeder 2003: 196). Care must be taken to avoid perpetuating gendered stereotypes, but that care can coexist with a prison system that considers the realities of women offenders’ lives.

The alternatives to incarceration must not be carried out in a way that imposes certain standards of good mothering or good breastfeeding on women offenders. Haney notes that, for some community-based correctional facilities, “the gendered message was clear: women were primarily, even solely, responsible for caretaking. Yet there was also very little attention to how this burden affected women. Many inmates had real ambivalence about their roles as mothers” (2013: 119). Tabbush and Gentile note that in some Argentine jails, “half of the incarcerated women with children under age four opted not to take their sons and daughters with them into prison” (2013: 137). It is imperative, therefore, that the safeguards to protect women who desire to breastfeed their children and to not be forcibly separated from them are not, in turn, used to limit the choices of other women. While it is important that women offenders are able to breastfeed, it is important that the correctional system does not use its power to foist breastfeeding on all inmates who deliver babies. While it is important that women are able to retain access to their babies, it would not be a satisfactory alternative to force all incarcerated mothers to bring their young children with them into life in a correctional facility. We must ensure that external and arbitrary norms of good motherhood are not imposed on mothers; the political goal is capability, not functioning. The goal of access cannot preclude the possibility of maternally chosen separation.

We have seen the importance of community-based corrections for women offenders and, especially, for mothers. But "to date, most mother-child facilities have few beds and short-term placements" (Raeder 2003: 188). So what policy changes are necessary to give women offenders the "preconditions of a life worthy of human dignity," to allow all eligible women to receive alternative sentencing instead of incarceration and separation from their children? Funding expansions for community-based corrections, particularly for facilities that integrate substance abuse treatment, trauma recovery services, and parenting and life skills classes, should be a priority. Funding these alternatives is politically viable, as it can be framed as saving taxpayer dollars while reducing recidivism; a bipartisan Criminal Justice Reform Subcommittee in the New Mexico State Legislature has been pursuing these reforms with some success. Eligibility criteria for these programs should be as broad as possible, and considered especially appropriate for mothers with substance abuse problems.

Legislation to protect new mothers who are incarcerated is also necessary. Laws like N.Y. Correction Law § 611, which allows the mother of a breastfed infant to be accompanied by her child if she is committed to a correctional facility at the time she is breastfeeding, and which also allows a child born to a committed mother to return with the mother to the correctional facility until the child is one year of age if the woman is capable of caring for the child, should protect women in all fifty states.[78] This law has been in place with minimal revision since 1929, so it should be emphasized that it is practicable (Craig 2009: 42S). New Mexico S.B. 363, proposed in January 2015—the "Expectant and Postpartum Prisoners Act"—attempted to create a "presumption…in favor of release for a woman who is pregnant or lactating, unless there is good cause to keep the woman in a correctional setting" during determinations of release or

[78] 2009 N.Y. Laws, Chap. 411; SB 1290.

bond, or in the computation of earned meritorious deductions.[79] S.B. 363, furthermore, would have allowed lactating prisoners to pump, store, and transfer milk, as well as to have visits to directly breastfeed the baby. Legal protections like these are necessary to change the current correctional culture.

Family ties departures are also appropriate for pregnant or lactating offenders. Federal sentencing guidelines set out a uniform sentencing policy: judges are required to consider the guidelines during sentencing, but are not required (since *United States v. Booker)* to craft sentences within the guidelines.[80] Family ties and responsibilities is one of the legitimate categories dictated by the guidelines for which a judge can issue a sentence that is lower than the federal uniform. That is, family ties and responsibilities can be used as a reason to give an offender a lower sentence. While parity in sentencing is an admirable goal, sentencing that is blind to the context of offenders' lives is not intelligent sentencing.

> Maybe the dawning of a new millennium will make us wiser and more willing to question whether a rule that denigrates offenders' relationships with their children in order to stamp out sentencing disparity makes sense from a criminal justice or community-oriented perspective. The guidelines beckon judges to ignore the risk that lengthy imprisonment of nonviolent single parents will cause an increase in intergenerational crime, precipitate the rise of an orphan class of children, and fail to rehabilitate offenders who in an earlier era would have been supervised in the community. (Raeder 2001: 251)

It would be appropriate for the guidelines to advise judges that lactation deserves consideration as grounds for a downward departure. Likewise, questions about lactation status should be added

[79] Expectant and Postpartum Prisoners Act of 2015, S.B. 363, 57th Legislature, State of New Mexico. At press time, S.B. 363 passed the Senate Judiciary Committee, the Senate, and the House Judiciary Committee unanimously, dying at the end of the legislative session without being heard in the House.

[80] United States v. Booker, 543 U.S. 220 (2005).

at all levels of correctional control, particularly upon arrest of a woman and at local jails where women may be awaiting bail or bond (see International Association of Chiefs of Police: 2014).

For women who must remain in institutional control, whether because they do not qualify for community-based corrections or because it is not available to them, protections should be put in place for lactation in prison. It should be noted at the outset, though, that provision for lactation within prison should be pursued only reluctantly, as this option does not preserve maternal access to children; community-based corrections or prison nursery programs are preferable from the standpoint of lactation capability, mother and infant well-being, and long-term health and recidivism. It should also be noted that accommodating breastfeeding within prison walls is much more difficult than accommodating breastfeeding under alternative sentencing options. State regulation of prison policies should be structured like proposed New Mexico S.B. 363, guaranteeing prisoners the ability to pump, store, and transfer milk, as well as to have visits to directly breastfeed the baby. Lactation support should be available, as well as medical counseling about the safety of milk expression. Prisons can implement these policies as they see fit (it may mean providing a special place for women to pump, or allowing them to pump and turn in the milk at regular checks). It may be appropriate for community partners to be involved in the transfer of milk from the prison to the infants. As successful programs become established, we will gain more evidence about the most effective structure and logistics.

For any of these options, whether community-corrections, prison nurseries, or programs that allow inmates to pump, child age limits should be employed as sparsely as possible. Ideally, a community-based corrections or prison nursery program could treat women and children until the mother is ready to reintegrate into society. It is not desirable that mothers should be torn away from their breastfeeding children when their child reaches an arbitrary age (past and

current programs have had three month, six month, twelve month, and three year limits). And as I have shown, "offenders who maintain ties to their families and communities during incarceration are less likely to recidivate" (Bloom et al. 2002: 69, see also ACOG 2013). There should be a presumption toward a family ties downward departure for a mother and child being treated in a community-based corrections or prison nursery program with a maximum child age limit if the mother's sentence exceeds the program's maximum child age. If restrictive policies must be written because of budget constraints, or because a mother has a particularly long sentence, care should be taken to allow the transition to happen in a way that respects the mother-child relationship. Prison pumping programs should have no end date—mothers should be allowed to pump for as long as they continue to have interest in pumping.

A comprehensive approach that takes into account the context of female criminality, the gendered pathways to crime, the special needs of trauma survivors and addicts, and the difficulty of community integration and economic viability for single mothers who are offenders will be the best outcome for mothers and their children, breastfed or not. It is worth noting that the policies I am arguing for here, community-based corrections or prison nurseries, do not apply only to breastfeeding mothers, but to all inmates who are pregnant or who have small children. Breastfeeding is best served by maternal access to children, as is the general well-being of all mothers and children. It is through this access that women's and children's capabilities will be honored.

Conclusion

In this chapter, I have argued that the capabilities approach is the most appropriate framework for thinking about the legal and political ramifications of mothers' and children's breastfeeding relationships. The capabilities approach insists that the flourishing and well-being

of all actors is considered, including mothers, fathers, and children. I have argued that respecting the capability of breastfeeding requires a society that provides institutional support for breastfeeding of all different kinds—for pumping, for direct feeding, for mothers who go back to work, for mothers who need maternity leaves, for mothers who want to feed in public, for mothers who want private places in which to do so. Any system short of this is running afoul of mothers' capabilities and human flourishing.

Maternal access to babies is crucial, as is a mother's ability to decide to separate from her child. Empowering mothers to have access to their breastfed children will require somewhat radical changes, especially in difficult cases like maternal incarceration and parental custody disputes. What I insist on here is that this difficulty cannot be used as an excuse to ignore the pressing needs of mothers and children.

CONCLUSION

Most people wholeheartedly agree that women should have the right to breastfeed. What this dissertation has aimed to show is how easily women's ability to breastfeed can be constrained. Especially within a cultural context that does not understand breastfeeding physiology, policies and institutions very often fail to meet the needs of breastfeeding mothers, even if that failure is unintentional. If corporate managers, public bystanders, judges, prison administrators, and legislators do not understand how lactation works and, therefore, what the needs of breastfeeding mothers are, those needs will continue to go unmet. This suggests that better general breastfeeding knowledge is politically important, and also that breastfeeding mothers should be consulted when designing policies that affect them. It also suggests that more policies affect breastfeeding mothers than the average non-lactating person might suspect.

Support for breastfeeding mothers, in my formulation, fits within a gender-egalitarian political theory; breastfeeding support does not require illiberal, traditional, or maternalist treatment of women, even if differential or sex-specific treatment of women is sometimes appropriate.

A guiding thread throughout this project is the role that norms play in constraining women's infant-feeding decisions: norms of ideal-workers restrict the ability of working women to breastfeed their children, norms of public space and of good mothering restrict the ability of breastfeeding mothers to experience public life without experiencing awkwardness or hostility, norms of good mothering affect mothers' access to their children and ability to separate from them, norms of ideal-workers limit the ways in which women can enact breastfeeding as

workers. Norms, of course, are difficult to manipulate from above. What I would like to suggest is that these norms are already in the process of changing organically as more people breastfeed, as more family members and friends are exposed to it. Breastfeeding women today, as a result, are demanding more: demanding better treatment in public, boycotting establishments that shame breastfeeding women, agitating for better conditions at work and in prison. The norms are changing; it is the policies and institutions that are struggling to keep pace. The previous three chapters are an attempt to articulate concrete ways that institutions and policies must change to keep pace with the rapidly changing norms affecting breastfeeding women.

I contend that the changes to institutions and policies that will support breastfeeding women will not circumscribe the autonomy of formula-feeding mothers. But to protect parents who cannot or do not wish to breastfeed, these policies should be articulated in a way that consciously avoids inflicting shame on parents who cannot or do not breastfeed (including, it may be noted, women with a history of breast surgery or cancer, some trans people, and gay fathers). When possible, we should advocate policies that will help all parents and children (such as generous parental leave for mothers and fathers) rather than narrow policies that will only help breastfeeding mothers and children.

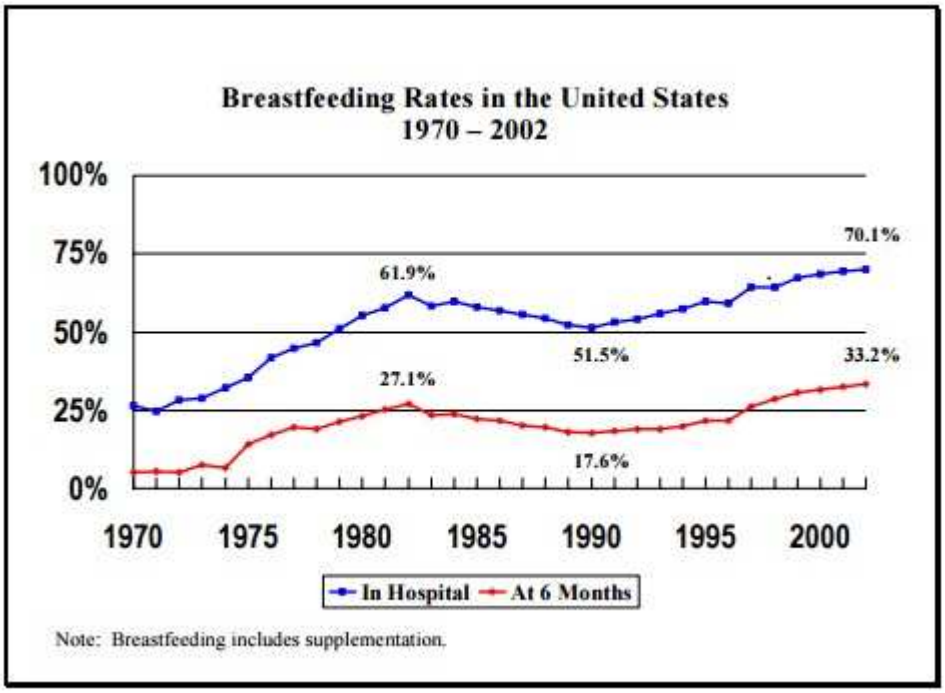
The final point I would like to make is that, contrary to many feminists' concern that breastfeeding operates to marginalize women, breastfeeding within a care-egalitarian society will not. If our social structures recognize the importance of care work for both sexes, specific needs like those of breastfeeding mothers will cease to be remarkable—indeed, our structures should be built to assume that all humans, all workers, will have periods of substantial caregiving over the course of their lives. Breastfeeding mothers will continue to have a more time-intensive care demands in the early years of parenting, but all humans are expected to have caregiving

commitments like this (a sick parent, spouse, or child, an elderly relative at the end of life, a loved one in rehab after an accident). What makes breastfeeding mothers so vulnerable now is that they are in a care-intensive position in a social context that actively de-values care. Breastfeeding mothers now, therefore, require special protection and policies supporting them. Ultimately, in a world that values care work of all kinds, in which ideal-worker norms are dismantled and adults share care responsibilities and formal labor responsibilities, breastfeeding mothers' needs will no longer be so outside the norm.

Until that time, a just and egalitarian society must provide the conditions under which women can, given the constraints of their lives, decide to breastfeed. I have argued that this will require radical changes to work policy, social family policy, and public norms. Breastfeeding mothers need lengthy maternity leave, support for breastfeeding at work, access to their children, high-quality and affordable child care, access to part-time work and to work re-entry services, excellent information about breastfeeding from evidence-based health professionals, excellent and breastfeeding-informed medical care, lactation support (regardless of income), highly involved fathers (or same-sex partners) who take on both work and care tasks, and a public reception that does not treat them with discomfort or disgust. Breastfeeding mothers whose breastfeeding intersects with other forms of difference (including single mothers, mothers of color, queer mothers, and low-income mothers) demand even more social protection and support.

With these supports in place, we can allow many more women to reach their desired breastfeeding duration. We can reject a society in which breastfeeding means the decision to spend more time with a breast pump than a baby. We can prevent low-income mothers from saying, "If I could, I would, but it seems impossible." We can create a society in which breastfeeding is not correlated with income and education. Justice demands no less.

Figure 1: Breastfeeding Rates in the United States, 1970–2002



Source: Mothers Survey, Ross Products Division.

Table 1: Breastfeeding Policy by Country.

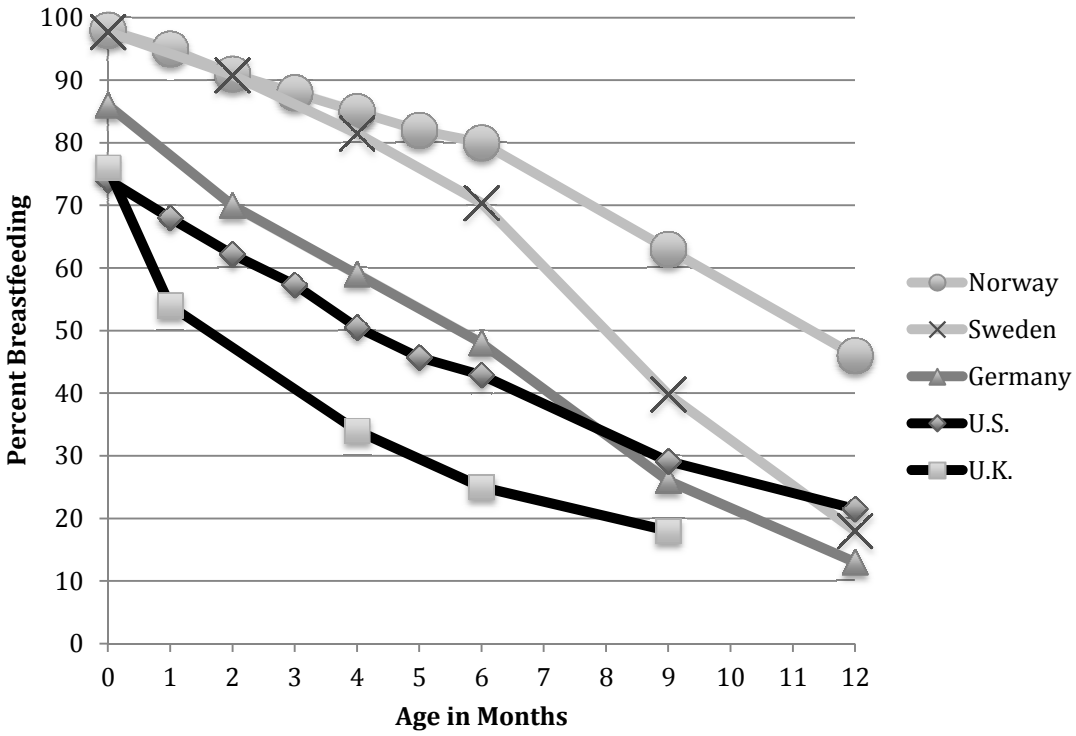
	Protective Negative Provisions		Enabling Positive Provisions					
	Right to at least 2 unpaid breaks to pump	Right to at least 2 unpaid breaks to pump or nurse	Right to paid breaks	Paid Maternity Leave of 3mo	Paid Maternity Leave of 6mo	Paid Maternity Leave of 12mo	Right to reduced working hours	Replacement Rate: Paid maternity (% of annual)
Sweden	✓	✓		✓	✓	✓	✓	82%
Norway	✓	✓		✓	✓	*	✓	86%
Germany (before 2007)	✓	✓	✓	**	**	**		Means-tested flat rate
Germany (2007 and later)	✓	✓	✓	✓	✓	✓		84%
U.S.	✓(as of 2013)							-
U.K.				✓	✓			10.3% plus flat rate

*Norway comes 6 weeks shy of providing paid maternity leave for 12mo (mothers can take 46 weeks of paid leave).

**Before 2007, German parents were entitled to a means-tested child-rearing benefit, which was paid to a higher household income threshold for the first 6 months of a child's life, and to a lower income threshold for the following 18 months. Households above the income threshold were not entitled to any paid benefit (Spiess and Wrohlich 2006).

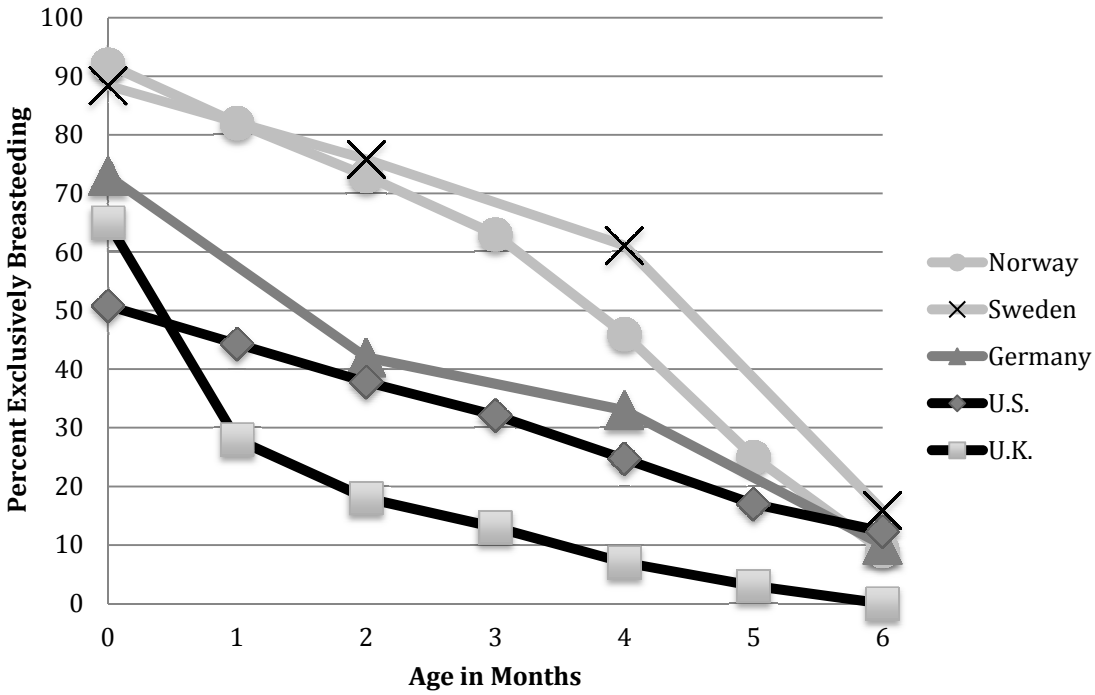
Sources: World Alliance for Breastfeeding Action 2006; U.S. Congress 2010; Spiess and Wrohlich 2006; Norwegian Ministry of Labour and Welfare 2011; Morgan 2006; U.K. Department of Trade and Industry 2001; U.S. Family and Medical Leave Act of 1993.

Figure 2: Breastfeeding Prevalence by Age, 2005



12 month data unavailable for the U.K.; Norwegian data from 2006; German data from 1997. Sources: United States, U.S. Centers for Disease Control and Prevention. Norway, Helsedirektoratet 2008. Sweden, Sveriges Officiella Statistik 2007. United Kingdom, U.K. N.H.S. 2007. Germany, Kersting and Dulon 2001.

Figure 3: Exclusive Breastfeeding Prevalence by Age, 2005



At 6 months, prevalence in the U.K. is less than 1%; Norwegian data from 2006; German data from 1997. Sources: United States, U.S. Centers for Disease Control and Prevention. Norway, Helsedirektoratet 2008. Sweden, Sveriges Officiella Statistik 2007. United Kingdom, U.K. N.H.S. 2007. Germany, Kersting and Dulon 2001.

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